CERTIFICATE AND TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 694

THE UNITED STATES OF AMERICA

vs.

GEORGE OTIS SMITH

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CERTIFICATE FILED FEBRUARY 15, 1932
RECORD FILED FEBRUARY 26, 1932

SUPREME COURT OF THE UNITED STATES

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Supreme Court of the District of Columbia

At law No. 79553

UNITED STATES OF AMERICA, PETITIONER

vs.

GEORGE OTIS SMITH, RESPONDENT

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Petition for writ of quo warranto

Filed May 4, 1931

In the Supreme Court of the District of Columbia

No. 79553

UNITED STATES OF AMERICA, PETITIONER

v.

GEORGE OTIS SMITH, RESPONDENT.

Leo A. Rover, United States attorney for the District of Columbia; John W. Davis, Alexander J. Groesbeck, counsel for the United States Senate.

1 TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA:

Comes now the United States of America, by Leo A. Rover, United States attorney for the District of Columbia, and respectfully shows unto the court:

1. That by an act of the Congress of the United States approved the 23rd day of June, 1930, amending an act approved on the 10th day of June, 1920, there was created and established a commission to be known as the Federal Power Commission, composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman and shall act as the principal executive

officer of the said commission. By said act of the Congress of the United States it is further provided that the commissioners
2 first appointed thereunder shall continue in office for terms of one, two, three, four, and five years, respectively, from June 23, 1930, the term of each to be designated by the President at the time of nomination.

2. That in pursuance of the statute aforesaid, the President of the United States, on the 3rd day of December, 1930, transmitted to the Senate of the United States the nomination of one George Otis Smith of Maine as a member of the Federal Power Commission for the term expiring on the 22nd day of June, 1935, said nomination being transmitted by letter in form as follows:

THE WHITE HOUSE, *December 3, 1930.*

To the Senate of the United States:

I nominate the following-named persons to be members of the Federal Power Commission for the terms herein designated as follows:

For the term expiring June 22, 1935, George Otis Smith, of Maine.

For the term expiring June 22, 1934, Frank R. McNinch, of North Carolina.

For the term expiring June 22, 1933, Ralph B. Williamson, of Washington.

For the term expiring June 22, 1932, Marcel Garsaud, of Louisiana.

For the term expiring June 22, 1931, Claude L. Draper, of Wyoming.

HERBERT HOOVER.

which said letter has since remained in the office of the Secretary of the Senate of the United States.

3. That in accordance with the rules of the Senate, the said nomination of the said George Otis Smith was duly referred to the Committee on Interstate Commerce, which said committee held
3 hearings and deliberated concerning the character, ability, and qualifications of the said George Otis Smith for the office to which he had been so nominated, and thereafter, to wit, on the 15th day of December, 1930, reported favorably to the Senate the name of the said George Otis Smith for the office to which he had been so nominated.

4. That on the 20th day of December, 1930, the Senate, in open executive session, undertook the consideration of the said nomination, and the following proceedings were had with reference thereto, to wit:

The presiding officer (Mr. Fess in the chair), stated the pending question, which was as follows:

"Shall the Senate advise and consent to the appointment of George Otis Smith, to be a member of the Federal Power Commission?"

On the question of agreeing thereto, yeas and nays were demanded by Mr. Dill, a Senator from the State of Washington, and the demand being supported by one-fifth of the Senators present the roll was called, whereupon 38 Senators were found to be voted in the affirmative and 22 in the negative and 35 not voting. So it was accordingly

"*Resolved*, That the Senate advise and consent to the appointment of the above named person to the office named agreeably to his said nomination."

That upon the announcement of the result of the vote so had the President pro tempore stated:

"The Senate advises and consents to the nomination and the President will be notified";

and no objection being made or further proceedings having been had in the Senate with reference to the said consent or the notification thereof, the following order was entered by the Secretary of the Senate in usual course upon the Executive Journal of the Senate for the said 20th day of December, 1930, to wit:

"*Ordered*, that the foregoing resolution of confirmation be forwarded to the President of the United States."

Any further proceedings having been had on the said day in the said executive session with reference to other nominations then pending before it, there was, in like manner, entered upon the Executive Journal of the Senate for the said day and date the following order, to wit:

"*Ordered*, that all resolutions of confirmation this day agreed to be forwarded forthwith to the President of the United States."

The executive business before the Senate having been thus disposed of, the Senate at 8.58 p. m. on said date resumed consideration of legislative business, all which will more fully and at large appear from the record of said proceedings spread upon the Executive Journal of the Senate at pages 186, 187, and 191 thereof, and from the report of the same contained in the Congressional Record of December 20, 1930, at pages 1260 and 1261.

5. That on the said 20th day of December, 1930, the same day on which the Senate so voted to advise and consent to the appointment of the said George Otis Smith, it thereafter adjourned in accordance with a concurrent resolution passed by the two Houses of Congress until 12.00 m., Monday, the 5th day of January, 1931.

6. That on Monday, the 22nd day of December, 1930, the Secretary of the Senate delivered by official messenger to the President of the United States the following communication, to wit:

In executive session, Senate of the United States. Saturday December 20, 1930

Resolved, that the Senate advise and consent to the appointment of the following-named persons to the offices named agreeably to their respective nominations:

Federal Power Commission

George Otis Smith, to be a member for the term expiring June 22, 1935.

Frank R. McNinch, to be a member for the term expiring June 22, 1934.

Marcel Garsaud, to be a member for the term expiring June 22, 1932.

Attest:

(Signed) EDWIN P. THAYER,
Secretary.

7. That thereupon the President of the United States, on the said 22nd day of December, 1930, signed and delivered, through the Department of State, a commission to the said George Otis Smith, purporting to appoint him a member of the Federal Power Commission and designated him chairman thereof; and the said George Otis Smith, forthwith and upon the same day and date took the oath of office prescribed by law as such member of the Federal Power Commission and chairman thereof, and undertook to assume and enter upon the discharge of the duties of said office, and has thence hitherto so continued.

6 8. That the vote and action of the Senate so had and taken on the 20th day of December, 1930, advising and consenting to the nomination of the said George Otis Smith as aforesaid was had and taken and the result thereof notified to the President, pursuant to and in accordance with the standing rules of the Senate, in such cases made and provided, the same having been adopted by the Senate in due exercise of the power vested in it by the Constitution of the United States.

9. That the said standing rules, being Nos. 38 and 39 of the standing rules of the Senate, are in form as follows:

"Rule XXXVIII. Executive session—Proceedings on nominations

"1. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and the final question on every nomination shall be, 'Will the Senate advise and consent to this nomination?' which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by unanimous consent.

"2. Hereafter all business in the Senate shall be transacted in open session, unless the Senate in closed session by a majority vote shall determine that a particular nomination, treaty, or other matter shall be considered in closed executive session, in which case all subsequent proceedings with respect to said nomination, treaty, or other matter shall be kept secret: Provided, That the injunction of secrecy as to the whole or any part of proceedings in closed executive session may be removed on motion adopted by a majority vote of the Senate in closed executive session; Provided further, That Rule XXXV shall apply to open executive sessions: And provided further, That any Senator may make public his vote in closed executive session.

"Anything in the rules of the Senate inconsistent with the foregoing is hereby repealed.

"3. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion.

"4. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate.

"5. When the Senate shall adjourn or take a recess for more than thirty days, all motions to reconsider a vote upon a nomination which has been confirmed or rejected by the Senate, which shall be pending at the time of taking such adjournment or recess, shall fall; and the Secretary shall return all such nominations to the President as confirmed or rejected by the Senate, as the case may be.

"6. Nominations neither confirmed nor rejected during the
8 session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President.

"RULE XXXIX. *The president furnished with copies of records of executive sessions.*

"The President of the United States shall, from time to time, be furnished with an authenticated transcript of the executive records of the Senate, but no further extract from the Executive Journal shall be furnished by the Secretary, except by special order of the Senate; and no paper except original treaties transmitted to the Senate by the President of the United States, and finally acted upon by the Senate, shall be delivered from the office of the Secretary without an order of the Senate for that purpose."

10. That pursuant to its adjournment had on the 20th day of December, 1930, as aforesaid, the Senate reconvened on the 5th day of January, 1931; and on that day went into open executive session; that thereupon one Thomas J. Walsh, a Senator from the State of Montana, who on the 20th day of December, 1930, had voted in the majority upon the question of advising and consenting to the appointment of the said George Otis Smith as a member of the Federal Power Commission, moved that the vote of the Senate taken as aforesaid, by
9 which the Senate advised and consented to the said nomination of the said George Otis Smith, be reconsidered, and accompanied said motion with a motion that the President be requested to return to the Senate the notification theretofore transmitted to him in that regard, which said motions were so made on the next day of actual executive session of the Senate after the vote upon said nomination had been taken, and were duly entered on the said 5th day of January, 1931, in manner and form as provided by the Standing Rules of the Senate hereinbefore set forth.

11. That thereafter the said motions came on to be considered in the Senate of the United States, and on the 9th day of January, 1931, the President pro tempore, under an agreement for unanimous consent, put to the vote of the Senate the motion so made and pending for reconsideration of the vote whereby the Senate had advised and consented to the appointment of the said George Otis Smith, and the motion prevailed by a vote of yeas, 44; nays, 37; not voting, 15; whereupon the President pro tempore put to the further vote of the

Senate the motion so made and pending to request the President to return to the Senate the notification theretofore sent to him by the Secretary of the Senate on the 22nd day of December, 1930, as aforesaid, which motion prevailed by a similar vote, all which will more fully and at large appear from the record of said proceedings spread upon the Executive Journal of the Senate, at pages 225 and 227 thereof. And thereupon the Secretary of the Senate forthwith forwarded to the President an authenticated transcript of the resolution requesting the return of the notification theretofore sent to him as aforesaid.

10 12. That on the 10th day of January, 1931, the President pro tempore laid before the Senate a message from the President of the United States reading as follows:

To the Senate of the United States:

I am in receipt of the resolution of the Senate dated January 5, 1931—

"That the President of the United States be respectfully requested to return to the Senate the resolution advising and consenting to the appointment of George Otis Smith to be a member of the Federal Power Commission, which was agreed to on Saturday, December 20, 1930."

I have similar resolutions in respect to the appointment of Messrs. Claude L. Draper and Col. Marcel Garsaud.

On December 20, 1930, I received the usual attested resolution of the Senate, signed by the Secretary of the Senate, as follows:

"*Resolved*, That the Senate advise and consent to the appointment of the following-named person to the office named agreeably to his nomination:

"Federal Power Commission

"George Otis Smith, to be a member of the Federal Power Commission."

I received similar resolutions in respect to Colonel Garsaud and Mr. Draper.

I am advised that these appointments were constitutionally made, with the consent of the Senate formally communicated to me, and that the return of the documents by me and reconsideration by the Senate would be ineffective to disturb the appointees in their offices.

I can not admit the power in the Senate to encroach upon the
11 Executive functions by removal of a duly appointed executive officer under the guise of reconsideration of his nomination.

I regret that I must refuse to accede to the requests.

HERBERT HOOVER.

The WHITE HOUSE, *January 10, 1931.*

13. That on the 10th of January, 1931, the said Thomas J. Walsh, a Senator as aforesaid, made a motion in the Senate of the United States to direct the Executive Clerk of the Senate to place on the Executive Calendar for the action of the Senate the name and nomination of the said George Otis Smith, which motion was agreed to by a vote of the Senate as follows: yeas, 36; nays, 23; not voting, 37; and thereupon the President pro tempore made order accordingly;

all which will more fully and at large appear from the record of said proceedings spread upon the Executive Journal of the Senate, at pages 233 and 234 thereof.

14. That thereafter, on the 23rd day of January, 1931, the President pro tempore of the Senate, in open executive session, put to a vote a motion by the said Thomas J. Walsh, a Senator as aforesaid, that the nomination of George Otis Smith, of Maine, for the office of member of the Federal Power Commission be recommitted to the Committee on Interstate Commerce for its consideration, which motion prevailed by the following vote: Yeas, 45; nays, 32; not voting, 19; all which will more fully and at large appear from the record of said proceedings spread upon the Executive Journal of the Senate, at page 306 thereof.

15. That thereafter, on the 3rd day of February, 1931, one
12 James Couzens, a Senator from the State of Michigan, acting for and on behalf of the Committee on Interstate Commerce, reported to the Senate without recommendation the nomination of the said George Otis Smith for the office of member of the Federal Power Commission, and the name and nomination of said George Otis Smith was thereupon ordered to be placed on the Executive Calendar for the further action of the Senate; all which will more fully and at large appear from the record of said proceedings spread upon the Executive Journal of the Senate, at page 351 thereof.

16. That thereafter on the 4th day of February, 1931, when the name and nomination of said George Otis Smith, of Maine, to be a member of the Federal Power Commission was read, the President pro tempore stated the question as follows:

"Will the Senate advise and consent to the appointment of George Otis Smith to be a member of the Federal Power Commission, for a term expiring June 19, 1935?"

On the question of agreeing thereto, the yeas and nays having been demanded, the roll of the Senate was called, and 33 Senators voting in the affirmative and 40 Senators voting in the negative and 23 Senators not voting, it was

"*Resolved*, That the Senate do not advise and consent to the appointment of George Otis Smith, to be a member of the Federal Power Commission, for a term expiring June 19, 1935."

all which will more fully and at large appear from the record of said proceedings spread upon the Executive Journal of the Senate, at page 366 thereof. That the said vote of the Senate not
13 advising and consenting to the appointment of the said George Otis Smith was put and taken upon the nomination of the said George Otis Smith, transmitted by the President of the United States to the Senate on the 3rd day of December, 1930, as aforesaid, and upon no other nomination, although as appears from the said record the date for the expiration of the term for which the said George Otis Smith had been so nominated was by clerical error stated to be the 19th day of June, 1935, instead of the 22nd day of June, 1935, as the fact in truth was.

17. That thereafter, on the 7th day of February, 1931, two days of actual executive session of the Senate having transpired since the

action last aforesaid, the Secretary of the Senate delivered by messenger to the President of the United States a notice of the rejection of the said nomination in form as follows:

Rejection

In executive session, Senate of the United States

Wednesday, February 4 (legislative day, Monday, January 26), 1931

Resolved, That the Senate do not advise and consent to the appointment of the following-named person:

Federal Power Commission

George Otis Smith, of Maine, to be a member of the Federal Power Commission, for the term expiring June 22, 1935.

(Signed) EDWIN P. THAYER.

18. That as clearly appears from the proceedings, so taken and the votes so had, the appointment of the said George Otis Smith to the office of member of the Federal Power Commission was not advised and consented to by the Senate of the United States, but, on the contrary, the Senate of the United States, by action duly and regularly taken in that behalf, and pursuant to and in accordance with its standing rules, refused to advise and consent to the appointment of the said George Otis Smith to the office aforesaid.

19. That by reason of the matters and things hereinbefore shown to the court, the said George Otis Smith, the commission issued to him on the 22nd day of December, 1930, as aforesaid, to the contrary notwithstanding, has not been duly and legally appointed to the office member of the Federal Power Commission, or duly and legally designated as chairman thereof; that he has usurped, intruded into, and now unlawfully holds and exercises the office of member of the Federal Power Commission and chairman thereof, and unlawfully claims and assumes to be such member and chairman.

20. That on the 5th day of February, 1931, the Senate of the United States adopted Senate Resolution No. 415, reading in part as follows:

"That the district attorney for the District of Columbia be, and he hereby is, requested to institute proceedings in quo warranto under the code of the said District in the Supreme Court thereof to test the right of George Otis Smith as a member of the Federal Power Commission; that he, the district attorney, be requested to associate with him counsel for the United States Senate in such proceedings * * *"

pursuant whereto this petition is now presented to the court.

21. Your petitioner therefore prays that a writ of quo warranto issue in the name of the United States against the said George Otis Smith, requiring him to show by what warrant he holds or exercises the office of member and chairman of the Federal Power Commission; that he be required to answer the averments of this petition, and that such proceedings be had as are prescribed by law; and if thereupon it shall be adjudged that the said George Otis Smith has so usurped, intruded into, and unlawfully holds the office of

member and chairman of the Federal Power Commission that he be ousted and excluded therefrom.

And your petitioner will ever pray, etc.

LEO A. ROVER,
United States Attorney for the District of Columbia.

JOHN W. DAVIS,
ALEXANDER J. GROESBECK,
Counsel for the United States Senate.

Answer to petition for writ of quo warranto

Filed May 23, 1931

In the Supreme Court of the District of Columbia

At law, No. 79553

UNITED STATES OF AMERICA, PETITIONER

v.

GEORGE OTIS SMITH, RESPONDENT

George Wharton Pepper, attorney for the respondent.

16 TO THE HONORABLES THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA:

The answer of George Otis Smith, the above-named respondent, to the petition of the United States of America respectfully represents:

1. The respondent admits the averments of the first paragraph of the petition.

2. The respondent admits the averments of the second paragraph of the petition, saving the final clause thereof, and alleges that the President, in nominating the respondent and others to be members of the Federal Power Commission, was acting in discharge of a duty laid upon him by the Constitution of the United States. The respondent denies the averment in the last clause of said paragraph that the letter of nomination has since its receipt remained in the office of the Secretary of the Senate and alleges that the same was duly referred and delivered to the Committee on Interstate Commerce,

17 was reported back to the Senate by said committee, was acted upon by the Senate in due course and since the appointment of the respondent to the office in question has remained in the custody of the Senate only as a record of a closed transaction.

3. The respondent admits the averments of the third paragraph of the petition.

4. The respondent admits the averments of the fourth paragraph of the petition and alleges—

(a) That following the announcement by the Presiding Officer of the advice and consent of the Senate to the appointment of the respondent no objection was made by any Senator to the statement of the Presiding Officer that "the President will be notified"; and that pursuant to the established practice of the Senate in such cases the statement so made became as if by unanimous consent an order of the Senate to their Secretary.

(b) That the order of the Senate as aforesaid was thereupon duly recorded in the Executive Journal.

(c) That the order set forth as follows in the 4th paragraph of the petition:

"Ordered, that all resolutions of confirmation this day agreed to be forwarded forthwith to the President of the United States."

was announced by the President pro tem, that no Senator objected to the order so announced and that pursuant to the established practice of the Senate in such cases the order so made became as if by unanimous consent an order of the Senate to their Secretary.

18 (b) That upon the making of said orders it became and was the duty of the Secretary of the Senate under the rules of the Senate, as interpreted by the established practice of the Senate forthwith to notify the President that advice and consent had been given to the appointment of the respondent, without awaiting the expiration of the second subsequent day of actual executive session.

5. The respondent admits the averments of the fifth paragraph of the petition.

6. The respondent admits the averments of the sixth paragraph of the petition.

7. The respondent admits the averments of the seventh paragraph of the petition, and alleges that in virtue of the proceedings in said paragraph set forth he became and is a member of the Federal Power Commission and chairman thereof for the term expiring June 22, 1935.

8. The respondent alleges that the vote and action of the Senate so had and taken on the twentieth day of December, 1930, were pursuant to the provisions of the Constitution of the United States.

9. The respondent admits that Nos. 38 and 39 of the standing rules of the Senate, as the same have been in force since a date prior to said December 20, 1930, are correctly set forth in the ninth paragraph of the petition.

10. The respondent, upon information and belief, admits the
19 averments of the tenth paragraph of the petition but alleges that the facts therein set forth are irrelevant and immaterial.

11. The respondent, upon information and belief, admits the averments of the eleventh paragraph of the petition but alleges that the facts therein set forth are irrelevant and immaterial.

12. The respondent admits the averments of the twelfth paragraph of the petition.

13. The respondent, upon information and belief, admits the averments of the thirteenth paragraph of the petition, but denies that there was pending in the Senate at any time after December 22, 1930, any nomination to the office to which on that date the respondent had been appointed.

14. The respondent, upon information and belief, admits the averments of the fourteenth paragraph of the petition but denies that there was pending in the Senate at any time after December 22, 1930, any nomination to the office to which on that date the respondent had been appointed.

15. The respondent, upon information and belief, admits the averments of the fifteenth paragraph of the petition but denies that there was pending in the Senate at any time after December 22, 1930, any

nomination to the office to which on that date the respondent had been appointed.

16. The respondent, upon information and belief, admits the averments of the sixteenth paragraph of the petition but denies that there was pending in the Senate at any time after December 22, 1930, any nomination to the office to which on that date the respondent had been appointed.

20 17. The respondent, upon information and belief, admits the aver ments of the seventeenth paragraph of the petition but denies that there was pending in the Senate at any time after December 22, 1930, any nomination to the office to which on that date the respondent had been appointed.

18. The respondent denies the averments of the eighteenth paragraph of the petition and alleges that on December 20, 1930, the Senate advised and consented to his appointment to the office in question, that the Senate in due course notified the President of such advice and consent, that the President thereupon, by and with the advice and consent of the Senate, appointed the respondent to be a member of the Federal Power Commission and the chairman thereof for the term expiring June 22, 1935.

19. The respondent denies the averments of the nineteenth paragraph of the petition and avers that by virtue of his appointment by the President, by and with the advice and consent of the Senate, he became, was, and is a member of the Federal Power Commission and the duly and legally designated chairman thereof; that he holds the said office in virtue of said appointment made pursuant to the applicable provisions of the Constitution of the United States and that he is lawfully in possession of said office and is rightfully exercising the powers and discharging the duties imposed upon the members of said commission by the act of Congress which provided for its creation.

20. The respondent admits the averments of the twentieth paragraph of the petition.

21 21. The respondent prays the judgment of the court that he lawfully holds the office of member and chairman of the Federal Power Commission and that he be permitted to go hence without day.

GEORGE WHARTON PEPPER,
Attorney for Respondent.

22 In the Supreme Court of the District of Columbia. Law No. 79,553

UNITED STATES OF AMERICA, PETITIONER
vs.
GEORGE OTIS SMITH, RESPONDENT

Opinion
Filed December 5, 1931

This proceeding was begun by a petition filed May 4, 1931, by the United States attorney for the District of Columbia. The petition prayed that a writ of quo warranto issue against the respondent

George Otis Smith requiring him to show by what warrant he holds or exercises the office of member and chairman of the Federal Power Commission; that he be required to answer the averments of the petition and that if upon further proceedings it shall be adjudged that the said George Otis Smith has usurped, intruded into, and unlawfully holds the said office that he be ousted and excluded therefrom.

Respondent answered the petition asserting his right to the office under an appointment by the President of the United States, alleged to have been made by and with the advice and consent of the Senate, and prayed the judgment of the court that he lawfully holds the office in question.

The facts in the case are all matters of public record and about them there is no dispute. The answer, however, does challenge certain conclusions of law drawn from those facts, and counsel have elected to submit the matter upon petition and answer.

STATEMENT OF FACTS

Congress by an act of June 23, 1930, amending an act passed on June 10, 1920, created and established a commission to be
23 known as the Federal Power Commission, composed of five commissioners to be appointed by the President, by and with the advice and consent of the Senate, and empowered the President to designate one of the commissioners as chairman to serve as the principal executive officer of the commission; and further provided that the office of the commission shall be in the District of Columbia where its general sessions shall be held.

On December, 3, 1930, the President transmitted to the Senate the nomination of George Otis Smith to be a member of the Federal Power Commission for a term expiring June 22, 1935. The Senate on December 20, 1930, in open executive session, and by a vote of 38 to 22, advised and consented to the appointment of the respondent to the office for which he had been nominated. On the same day it was ordered by the Senate that the resolution of confirmation be forwarded forthwith to the President. That upon the announcement of the result of the vote so had the President pro tempore stated: "The Senate advises and consents to the nomination and the President will be notified;" and no objection being made or further proceedings having been had the following order was entered by the Secretary of the Senate upon the Executive Journal of the Senate for that date, to wit:

"Ordered, that the foregoing resolution of confirmation be forwarded to the President of the United States."

and further proceedings having been had that day in said executive session with reference to nominations then pending before it there was in like manner entered upon said Journal the following order, to wit:

"Ordered, that all resolutions of confirmation this day agreed to be forwarded forthwith to the President of the United States."

This order was entered late in the evening of Saturday, December
20th, and later the same day the Senate adjourned in accord-
24 ance with a concurrent resolution of the two houses of Congress until noon of Monday, January 5, 1931. On Monday, December 22, 1930, the Secretary of the Senate executed said order and delivered by official messenger to the President the following communication:

In executive session, Senate of the United States, Saturday, December 20, 1930

Resolved, That the Senate advise and consent to the appointments of the following named persons to the offices named agreeably to their respective nominations:

Federal Power Commission

George Otis Smith, to be a member for the term expiring June 22, 1935.

Frank R. McNinch, to be a member for the term expiring June 22, 1934.

Marcel Gersaud, to be a member for the term expiring June 22, 1932.

Attest:

(Signed) EDWIN P. THAYER,
Secretary.

Subsequently and on the same day the President signed, and through the Department of State delivered to respondent a communication purporting to appoint him a member of the Federal Power Commission and designating him chairman thereof. The respondent then on the same day took the oath of office and undertook forthwith to discharge the duties of said office.

On Monday, January 5, 1931, which was the next day of actual executive session of the Senate after said confirmation, a motion to reconsider was made by a Senator who had voted to confirm, accompanied by a motion to request the President to return the resolution of confirmation which had been transmitted to him by the Secretary of the Senate. Both motions were duly adopted and the President was notified in due course on January 9, 1931. The President, on January 10, 1931, informed the Senate by a message in writing to the effect that he had appointed respondent to the office in question after receiving notification of confirmation and therefore refused to accede to the Senate's requests. The message of the President read as follows:

To the Senate of the United States:

I am in receipt of the resolution of the Senate dated January 5, 1931—

"That the President of the United States be respectfully requested to return to the Senate the resolution advising and consenting to the appointment of George Otis Smith to be a member of the Federal Power Commission, which was agreed to on Saturday, December 20, 1930."

I have similar resolutions to the appointment of Messrs. Claude L. Draper and Col. Marcel Gersaud.

On December 20, 1930, I received the usual attested resolution of the Senate, signed by the Secretary of the Senate, as follows:

"Resolved, That the Senate advise and consent to the appointment of the following-named person to the office named agreeably to his nomination:

"Federal Power Commission

"George Otis Smith, to be a member of the Federal Power Commission.

I received similar resolutions in respect to Colonel Gersaud and Mr. Draper.

I am advised that these appointments were constitutionally made, with the consent of the Senate formally communicated to me, and that the return of the documents by me and reconsideration by the Senate would be ineffective to disturb the appointees in their offices. I can not admit the power in the Senate to encroach upon the Executive functions by removal of a duly appointed executive officer under the guise of reconsideration of his nomination.

I regret that I must refuse to accede to the requests.

HERBERT HOOVER.

The WHITE HOUSE, *January 10, 1931.*

Thereafter a motion was made and adopted in the Senate directing the Executive Clerk of the Senate to place on the Executive Calendar for the action of the Senate "the name and nomination of the said George Otis Smith." Subsequently, on February 4, 1931, the
26 President pro tempore of the Senate put to the Senate the question of the advice and consent to the appointment of the respondent, and the majority of Senators voted in the negative. Notification of this action was sent to the President on February 7, 1931.

On February 5, 1931, the Senate by resolution requested the district attorney of the District of Columbia to institute in this court proceedings in quo warranto under the code of the District of Columbia to test respondent's right to hold his office.

The sole question for the determination of the court is one of law, namely, was the respondent George Otis Smith, appointed by the President by and with the advice and consent of the Senate, or did the Senate in strict conformity with its rules refuse that advice and consent.

27 SENATE RULES INVOLVED

Rule XIII

1. When a question has been decided by the Senate, any Senator voting with the prevailing side may, on the same day or on either of the next two days of actual session thereafter, move a reconsideration; and if the Senate shall refuse to reconsider, or upon reconsideration shall affirm its first decision, no further motion to reconsider shall be in order unless by unanimous consent. Every motion to reconsider shall be decided by a majority vote, without debate, and may be laid on the table without affecting the question in reference to which the same is made, which shall be a final disposition of the motion.

2. When a bill, resolution, report, amendment, order, or message, upon which a vote has been taken, shall have gone out of the possession of the Senate, and been communicated to the House of Representatives, the motion to reconsider shall be accompanied by a motion to request the House to return the same; which last motion shall be acted upon immediately, and without debate, and if determined in the negative, shall be a final disposition of the motion to reconsider.

Rule XXXVIII

1. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and the final question on every nomination shall be, "Will the Senate advise and consent to this nomination?" which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by unanimous consent.

2. Hereafter all business in the Senate shall be transacted in open session, unless the Senate in closed session by a majority vote shall determine that a particular nomination, treaty, or other matter shall be considered in closed executive session, in which case all subsequent proceedings with respect to said nomination, treaty, or other matter shall be kept secret: Provided, That the injunction of secrecy as to the whole or any part of proceedings in closed executive session may be removed on motion adopted by a majority vote of the Senate, in closed executive session: Provided further, That Rule XXXV shall apply to open executive sessions: And provided further, That any Senator may make public his vote in closed executive session.

Anything in the rules of the Senate inconsistent with the foregoing is hereby repealed.

3. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but, if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion.

28 4. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate.

5. When the Senate shall adjourn or take a recess for more than thirty days, all motions to reconsider a vote upon a nomination which has been confirmed or rejected by the Senate, which shall be pending at the time of taking such adjournment or recess, shall fall; and the Secretary shall return all such nominations to the President as confirmed or rejected by the Senate, as the case may be.

6. Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President.

Rule XXXIX

The President of the United States shall, from time to time, be furnished with an authenticated transcript of the executive records of the Senate, but no further extract from the Executive Journal shall be furnished by the Secretary, except by special order of the Senate; and no paper, except original treaties transmitted to the Senate by the President of the United States, and finally acted upon by the Senate, shall be delivered from the office of the Secretary without an order of the Senate for that purpose.

It is contended by the petitioner that—

"First. Rules XXXVIII and XXXIX of the standing rules of the Senate by their explicit terms empowered the Senate to entertain a motion, made before the expiration of the next two days of actual executive session, to reconsider its vote advising and consenting to the appointment of the respondent, even though the President had been formally notified of such consent.

"Second, In adopting Rules XXXVIII and XXXIX the Senate did not exceed the power vested in it by article 1, section 5, of the Constitution, and that the rules are binding upon both the Senate and the Executive.

"Third. The signing and delivery of a commission and the taking of an oath by the respondent can not fortify the position of the respondent or shield him from ouster by this court."

29 In support of these contentions it is argued by petitioner that the Senate proceeded in this matter in strict compliance with its rules; that the rules do not ignore constitutional restraint, or violate fundamental rights; that the Senate order that the resolution of confirmation be sent to the President forthwith did not preclude reconsideration within two days of actual executive session next succeeding the vote, and that such notification was not tantamount to a warrant to proceed forthwith to issue the commission, and that it did not waive or suspend its rules, nor could it suspend its rules except by unanimous consent; that notwithstanding the notification the President was chargeable with knowledge that the Senate retained its right to reconsider the nomination; that the question of reconsideration could have been finally disposed of immediately after the vote of confirmation, by a motion to reconsider the vote on the nomination and by having that motion laid on the table; that the power to reconsider was not lost because the President had acted and appointed respondent before the request for return of the notification was received; that the Senate never lost control of the subject matter; that the nomination remained in its custody and possession in its files and records from the date it was first received from the President until the present time; that the rules are plain, explicit, and unambiguous, therefore judicial construction is not called into play; and that notwithstanding the President's refusal to return the resolution of notification, the Senate retained the power to reconsider the nomination and finally reject it; and that it clearly appears from the record of the proceedings in the Senate that the Senate did not advise and consent to the appointment of the respondent to the office of member of the Federal Power Commission, but on the contrary, that the Senate by its action duly and regularly taken, in accordance
30 with the standing rules, refused to advise and consent to his appointment, and that despite the issuance of a commission

and the taking of an oath of office, respondent has not been duly and regularly appointed to said office or duly or regularly designated as its chairman, and therefore he has been and is at present unlawfully holding and exercising the office of member and chairman of the commission.

It is contended by the respondent that—

"First. The Senate of the United States had no power to reconsider its action in this case if and when the transaction had passed out of its control and had not been restored to its control by the voluntary action of the Executive.

"Second. In this case the Senate by its own voluntary and deliberate act, surrendered its control over the transaction to the Executive, when having voted to advise and consent to the appointment, it directed that the Executive be notified forthwith and the Executive was so notified.

"Third. The President upon receiving that notification was wholly justified in assuming that it was a notification sent to him to the end that he might act; that he was well within his constitutional authority when he did act and signed the commission of the respondent."

Briefly, the respondent urges that when the Senate advised and consented to the nomination and notified the President of its action, that legislative branch of the Government parted with its control over the subject matter which thereupon passed into the hands of the Executive, and that thereafter there could be nothing upon which the legislative body could take further action, unless and until the Executive at or without request should restore to the Senate the control with which it had voluntarily parted; and that the Executive, after appointment, could not restore the control to the Senate without violating and infringing the rights of the appointee.

31 In Article II, section 2, of the Constitution it is provided that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." In section 3 of the same article, the President is directed to "commission all the officers of the United States."

In Marbury *v.* Madison, 1 Cranch, 137, 155–156 (1803), after quoting the above clauses of the Constitution, Chief Justice Marshall says:

"They seem to contemplate three distinct operations: 1st, the nomination. This is the sole act of the President, and is completely voluntary. 2d, the appointment. This is also the act of the President, and is also a voluntary act, though it can only be performed by and with the advice and consent of the Senate. 3d, the commission. To grant a commission to a person appointed, might, perhaps, be deemed a duty enjoined by the Constitution. 'He shall' says that instrument, 'commission all the officers of the United States.'"

He then proceeds to point out the fact that "the commission is not necessarily the appointment though conclusive evidence of it."

It thus appears from section 2 that three separate and distinct steps are contemplated by the Constitution. In the first place, the President nominates the person proposed to be appointed. Second, the Senate must advise and consent that the nominee should be appointed, and lastly in pursuance of the nomination and the advice and consent of the Senate the President makes the appointment.

It is not questioned that the appointment is complete when the President has signed the commission, and the subsequent taking of the oath and the delivery of the commission to the appointee are not a part of the appointing process.

32 It is conceded that the Senate has no power of removal, and, when an officer has been duly confirmed and regularly appointed, the Senate has no power by a subsequent alteration of its vote to disturb him in that office. It is further conceded that when the Senate has once finally given its advice and consent to a nomination, in conformity with its rules, its power in respect to that nomination is exhausted, and its decision, so far as the Senate is concerned, is irrevocable.

The decision of this controversy necessarily involves the consideration of the Senate rules relating to the reconsideration of a vote confirming or rejecting a nomination, and the meaning and purpose of those rules may be better understood by reviewing their development.

An historical survey of the development of the rules of the Senate relating to the reconsideration of a vote confirming or rejecting a nomination and the precedents of the Senate under those rules will enable us to apply the existing rules to the facts of the present case.

An historical survey of such rules from their beginning to the present date is hereto appended.

There was used at the hearing of this case a pamphlet containing a list of Senate precedents for reconsideration of confirmations or rejections after notification of the Senate's action to the President, from 1829 to May, 1930, compiled in the legislative reference service of the Library of Congress, at the request of counsel for both parties in this case. In this pamphlet there is a brief summary of the facts and the action of the Senate in each case and a reference to the volume and pages of the Executive Journal where the official action of the Senate therein is recorded. The pamphlet is filed herewith and

33 will be referred to as "Senate Precedents."

Did the Senate by its action of December 20th, 1930, reserve its right of reconsideration of its vote or did it by its unanimous resolution directing the Secretary to notify the President of its action part with its control of the matter and waive its election to reconsider its vote?

If the Senate had not adopted the resolution notifying the President forthwith of the confirmation of the respondent, the Secretary of the Senate would have been bound by the provisions of the following section of the rules:

"Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate." (Ibid., p. 7.)

If the Senate had not "otherwise ordered," the action on the nomination would have remained in the Senate until the expiration of two subsequent days of actual executive session, and there would have been no question that the transaction continued in the control of the Senate. In any event the President could not in the interval have proceeded to appoint, for he would have lacked the advice and consent of the Senate, which are prerequisite to such action.

It is urged that the real significance of formal notification by the Senate to the President is the transit of control over the transaction from the legislative to the executive department, just as the significance of the return of the notification by the President would be the restoration of control by the executive to legislative branch.

If the Senate elected to treat its vote of consent as final, and proceeded to surrender its control over the transaction by referring
34 the matter back to the President for executive action executive control would thereupon be resumed and it would become optional with the President to appoint or not to appoint. Even though the Senate had thus parted with control and thus referred the matter back to the President it may, if it acts before the President appoints regain control, if the President complies with the Senate's request and returns the resolution of notification. The rule provides that in such case if a motion to reconsider is made it shall be accompanied by a motion to request the President to return to the Senate the notification of confirmation. This was the course the Senate in this case sought to pursue, but the President had already appointed. If the Senate had lost control of the transaction and the President having appointed, he would also have parted with his control over the matter and the President could not have disturbed the appointee in his office except by the exercise of his power of removal.

The general rule in a parliamentary body is that a motion to reconsider comes too late if the body has parted with the possession and control of the subject matter. In Jefferson's Manual, Section XLIII, second paragraph, there is the following statement on the general subject of reconsideration:

"If, after the vote, the paper on which it is passed has been parted with, there can be no reconsideration; as if a vote has been for the passage of a bill, and the bill has been sent to the other House."

The constitutional provision for the consent and advice of the Senate of a nomination is not a provisional or conditional one. Rule XXXVIII contains no provision that reconsideration may be proceeded with if the President fails to return the notification. Can the Senate consent to a nomination and advise the President of such action and then say that the action of which it had advised the President, in accordance with its rules, was merely conditional upon
35 its option or election to reconsider the previous vote on the matter, and if so would its rule in that regard be constitutional?

The first rule that provided for reconsideration by the Senate of its previous action was Senate rule of 1790, and that rule, together with the rule with respect to the matter passing out of the possession of the Senate on announcing its action, as amended by the rules of 1806, 1818, and 1820, were numbered 21, renumbered 19 (appendix, p. 2, p. 3), and later embodied in rule 20 (appendix, p. 20), and now the present Rule XXXVIII (supra, p. 6).

Original rule 21, sanctioned reconsideration within three subsequent days of actual session, but provided that no motion for reconsideration of a vote shall be in order if a bill, resolution, message, report, amendment, or motion, upon which a vote was taken, shall have gone out of the possession of the Senate, nor after the usual message shall have been sent from the Senate announcing their decision. (Appendix, p. 2.)

The Senate had a right to retain possession but if this was parted with reconsideration was no longer possible. Since this was the general rule but in the case of nominations after definite action, it was evident the Senate thought it ought not to keep control of a case beyond the day on which it was taken as the rule adopted on March 27, 1818, provided that all nominations approved or definitely acted upon by the Senate should be returned by the Secretary to the President from day to day as the proceedings occurred, any rule or usage to the contrary notwithstanding. (Appendix, p. 2.)

Under this rule it is clear that after notification to the President reconsideration was out of order.

The Senate so decided by unanimous vote in 1830 in the case
36 of Isaac Hill, nominated Second Comptroller of the Treasury, "Motion to reconsider unanimously held not in order April 14, because the President had been notified." (See Senate Precedents, p. 5, Senate Executive Journal, vol. 4, pp. 90–93.)

In the case of Joseph K. Barnes, nominated March 2, 1864, return of resolution was requested and motion to reconsider entered March 7, 1864. The Senate permitted a Senator to withdraw his motion for reconsideration after President Lincoln had advised the Senate that he had already made the appointment in question. This precedent shows that notwithstanding the flat declaration of the Senate that after loss of possession reconsideration was too late, the Senate entertained a motion to reconsider and requested the return of the resolution and then abandoned its course when informed that the President had already appointed. The only two significant changes in the provisions of the present rules not contained in the earlier are, first, the right of the Senate to defer notification for two days and, second, the provision for a motion to request the President to return the notification. (Appendix, pp. 6–8.)

In the case of John H. Goddard, confirmed May 18, 1864, return of resolution was requested and motion to reconsider entered June 7th. The President replied June 25th to the effect that he had received the request for the return of the resolution advising and consenting to the appointment of Goddard and that the resolution of notification was received May 19th, and that Goddard was commissioned on the same day, and that the appointment being thus perfected, the resolution had become a part of the permanent records of the Department of State. There is no record of any further action upon it by the Senate. (Senate Precedents, p. 18, Senate Executive Journal, vol. 13, pp. 350, 351, 625.)

37 In the case of Westley Frost, confirmed February 23, 1867, return of the resolution notifying of the Senate action requested February 27th. The President on March 2d replied transmitting a report from the Secretary of the Treasury to the effect that Frost was commissioned and qualified on February 26th. The appointment had been made after the resolution of confirmation and before notice of a resolution to reconsider. The appointee had not actually taken the oath of office. The Senate defeated a resolution requesting the Secretary of the Treasury to recall the commission. The resolution was submitted on March 25th (Senate Executive Journal, vol. 15, pp. 246, 277, 284):

"Whereas it appearing that on the 27th day of February last the Senate recalled its action on the nomination of Westley Frost as

assessor of the 21st district of Penna., and that he did not take the oath of office until the 2d day of March; therefore

"Resolved, That the Secretary of the Treasury recall the commission of the said Frost until the action of the Senate upon his nomination."

Senator Sherman submitted another resolution April 1st to the effect that the Secretary of the Treasury be requested to recall the commission issued to Frost, it appearing that his confirmation was recalled before he received such commission or was sworn into office; and that the President be requested to return to the Senate the action of the Senate in the appointment of the said Frost. This resolution was rejected. (Senate Precedents, pp. 28, 29, and 30, Senate Executive Journal, vol. 15, pp. 519, 501.)

A study of the Senate precedents down to and including March, 1867, reveals consistent action by the Senate in declining to reconsider any nomination after (by notification to the President) the case had passed from the control of the legislative into the control of the executive branch of the Government. Under the rules as they then stood there was indeed no provision for a request upon the
38 President for a return of the papers; but only a flat declaration that a motion to reconsider was out of order if the resolution of notification had gone out of the possession of the Senate.

Notwithstanding there was no provision in the rules requiring it, in every case, after notification, such requests were made for the return of such resolutions exactly as they would be under the present rules. If a request for return is actually made and the question is whether the fact of prior appointment shall be accepted by the Senate as a satisfactory Executive reply, it would seem to be quite immaterial whether the making of the request was the result of unwritten usage or of written rule. The result actually reached by the Senate during the period from 1790 to 1867 was that after the Senate lost control or possession of a matter by notification to the President unless the President restored control by returning the resolution of notification the Senate could not reconsider its vote on the nomination.

Prior to April, 1867, irrespective of the limited period during which the Senate could reconsider, its power to do so was ipso facto lost once the resolution had gone out of its possession, announcing its decision. In other words the transmission of the resolution of notification was the controlling factor.

On April 6, 1867, the Senate rule relating to reconsideration was amended. Perhaps it was questioned whether after possession had been lost, reconsideration could ever thereafter be in order under the rule, even if possession was restored by Executive action. The amendment accordingly made the letter of the rule conform to pre-existing usage by excepting nomination cases from the flat declaration that reconsideration was always out of order after loss of
39 possession, and added the proviso that, in nomination cases, after notification to the President, the motion to reconsider must be accompanied by a request for return. (Appendix, p. 4.) There is no provision in the rule that if the request to restore possession is not complied with, the Senate may nevertheless vote a reconsideration. Nor is there any provision of the rule that such course may be taken by the Senate if, after notification, the President has actually appointed and his reply to the Senate so states.

At this point it might be well to observe that a nomination by the President, whether in the form of a letter or message of the President to the Senate or any other message or written communication from the President to the Senate, other than a treaty, is never returned by the Senate to the President, but always has remained in the files and records of the Senate; and notwithstanding the provisions of the various Senate rules directing the Secretary to return to the President nominations as either confirmed or rejected, or not acted upon, such nominations are not now and never have been actually returned by the Secretary to the President, but merely a copy of the resolution or notification advising of the Senate's action or its failure to act on such nominations is sent to the President. The actual paper always remains in the files of the Senate. So the language of the rules "shall have gone out of the possession of the Senate, announcing their decision," and the phrases directing the Secretary of the Senate to return nominations to the President and the direction to the Secretary to notify the President of the Senate's action on nominations, are interchangeably used as expressions of relinquishing possession and control of the matter.

40 While, therefore, the mere insertion of a provision for a request for return made no substantial change in the rule, one effect of the amendment of 1867 was to prolong the time during which, after confirmation and before notification, the Senate might make up its mind whether or not to reconsider. By the earlier rule the Secretary of the Senate had been instructed to return to the President "from day to day" all nominations as soon as action upon them had been taken. By the amendment of 1867 this instruction was so changed that the Secretary was to notify the President "on the next day after such action is had." The Senate, however, reserved to itself the right to part with possession at an earlier or later date by adding the proviso "unless otherwise ordered by the Senate." (Appendix, pp. 2, 4.)

A further amendment was made on March 25, 1888. This was during the administration of President Johnson. So far as applicable to the present question, the amendment merely extended the time for notification to the President to the expiration of the time limit for making a motion to reconsider, i. e., the two next days of actual session. Again, however, the Senate reserved its right to part with possession within the two days by adding the same proviso as before. (Appendix, pp. 4, 5.)

That the Senate was all the while consistently adhering to the principle stated by Jefferson appears from the action taken in the Boseman case in 1873. B. A. Boseman was confirmed as deputy postmaster at Charleston Court-House, S. C., and the President was notified "forthwith" March 18, 1873. The nomination was withdrawn March 21st. The same day the Senate unanimously "Resolved, That the nomination of B. A. Boseman, of Charleston S. C., having been confirmed and finally disposed of by the

41 Senate and so certified to the President, can not be withdrawn, the same having gone out of the possession of the Senate." Here a nomination had been confirmed and the Senate had elected to treat its action as final by notifying the President "forthwith." Three days later the President attempted to withdraw the nomination. The notification received by him from the Senate had terminated senatorial possession and had restored Executive control.

It is impossible to escape the conclusion that such Senate action is wholly inconsistent with a reserved right, after notification, to retake possession of the transaction except by Executive compliance with a request for return. Accordingly in the case of J. C. S. Colby, confirmed and the President notified "forthwith," December 17, 1874, a motion to reconsider was entered and a return of the resolution of notification was requested December 21st. The President in his reply of January 5, 1875, acknowledged receipt of the resolution requesting the return of the resolution of confirmation and advised that the commission was signed December 17th, and had been forwarded to Colby before receipt of the resolution of recall (Senate Precedents, p. 52), and the Senate accepted this reply of President Grant as conclusive. (Senate Executive Journal, vol. 19, p. 460.)

On January 7, 1877, the Senate rules were again amended. It will be recalled that up to that date there was nothing in the rules which explicitly authorized the Senate to request the return of a measure after it had passed into the possession of the House. By this amendment the case of the House was assimilated to that of the President, i. e., in both cases, after possession had been parted with, a motion to reconsider must be accompanied by a motion of request for return. This amendment strengthens the view that a compliance with the request for return must precede a vote on the motion to reconsider. It must be obvious that the Senate would be powerless to affect the subsequent course of events if the House, after notification, had acted on the matter in hand and so advised the Senate. The only way in which the amendment of 1877 specifically affected the case of nominations was by extending the time for notification to "the next two days of actual executive session." The right to notify sooner was again reserved by retaining the proviso "unless otherwise ordered by the Senate." (Appendix, p. 6.)

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While the rules stood thus the case of Morris Marks came up in 1878. A motion to reconsider was entered and return of resolution requested June 11th. The President replied June 14th:

"In reply I would respectfully inform the Senate that upon receipt of the notice of confirmation the commission of Mr. Marks was signed and delivered to him on the 8th instant."

This we may assume was accepted as satisfactory as no subsequent proceeding was recorded.

The Senate rules on reconsideration took their present form on January 11, 1884 (ibid., pp. 6, 7). Rule XIII now deals with reconsideration of action where control has passed to the House and the provision on that subject is the same as theretofore. Rule XXXVIII is devoted to reconsideration in the case of Executive nominations. No change of substance was made by it. The principle of possession as necessary to effective reconsideration is still recognized by the provision for a request for return of notification. The time within which the Senate must make up its mind whether or not to treat a vote of confirmation as final is still two days of actual executive session. The right within that time to part with possession by notification to the President is still preserved. In short, the Senate rule in its present form indicates no departure whatever from the theory which inspired the very earliest rule—namely, that parliamentary reconsideration is impossible unless the subject-matter is still within the Senate's possession. Changes since 1790 are really

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matters of detail—such as the substitution of a request for Executive return for the flat declaration that after notice to the President reconsideration was not in order, the extension of the time for notifying the President, and the reservation of the right to notify him sooner. The present case is the first since the rule took its present form in which the President has stood upon his rights and the Senate has taken issue with him.

After an appointment is made by the President upon notification by the Senate of its confirmation of a nominee, the President is without authority to restore control to the Senate by a return of the resolution of notification.

In the case of United States *v.* Le Baron, 19 How. 73 (1856), President Taylor had nominated Beers to be deputy postmaster of Mobile. The Senate had duly consented to the nomination. The President thereupon signed the officer's commission, but died before it was transmitted to the appointee. Thereafter Beers attempted to discharge his duties as deputy postmaster and because of alleged breach of duty, action for debt was brought by the United States upon the official bond signed by Beers and two sureties, one of whom was Le Baron. By way of defense Le Baron relied (inter alia) upon the proposition that Beers was not in office under the appointment because the commission had not been transmitted until after the President's death. This defense was adjudged insufficient. At page 78 Mr. Justice Curtis uses the following language:

"When a person has been nominated to an office by the President, confirmed by the Senate, and his commission has been signed by the President * * * his appointment to that office is complete. Congress may provide, as it has been done in this case, that certain acts shall be done by the appointee before he shall enter on the
44 possession of the office under his appointment. These acts then become conditions precedent to the complete investiture of the office; but they are to be performed by the appointee, not by the Executive; all that the Executive can do to invest the person with his office has been completed when the commission has been signed and sealed; and when the person has performed the required conditions, his title to enter on the possession of the office is also complete. The transmission of the commission to the officer is not essential to his investiture of the office. If, by any inadvertence or accident, it should fail to reach him, his possession of the office is as lawful as if they were in his custody."

This decision is accordingly a reassertion of the point made in Marbury *v.* Madison, namely, that constitutional appointment is complete when the commission has been signed and sealed.

The rules under which the Senate proceeded, as herein pointed out, are not clear or unambiguous.

Can any other interpretation be given to the notification than that it was intended to inform the President that the Senate had discharged its constitutional function and had unconditionally approved the nomination, and that the President was free to discharge his constitutional function in the matter? It would be illogical to construe the Senate communication to the President as merely a message of encouragement, and to advise him of the fact that there actually had been a test vote and that a clear majority favored confirmation of the nominee. When it is reflected that

several months may elapse before the second day of actual executive session expires, it will be seen that unless the Senate meant the President to act upon its notification the sending of it was futile and even misleading. Constitutional theory, parliamentary usage, Senate rules, Senate precedents, and considerations of practical procedure alike lead to the conclusion in the instant case that when the Senate, in conformity with its own rules unanimously ordered notice of consent to be sent to the President, it once for all surrendered its control of the matter and its right to reconsideration and left the Executive free to make a constitutional appointment. When a commission was signed and sealed and, irrespective of the steps taken by the appointee to qualify, the President conferred upon him title to the office in question and of it he cannot be deprived unless removed by the President according to law.

Therefore the petition for a writ of quo warranto will be denied."

PEYTON GORDON (Sgd.),
Justice.

DECEMBER 5, 1931.

HISTORICAL SURVEY OF THE SENATE RULES RELATING TO RECONSIDERATION OF A VOTE CONFIRMING OR REJECTING A NOMINATION FROM THE BEGINNING TO THE PRESENT DATE

The Senate adopted its first set of rules on April 16, 1789. These rules contained no reference to reconsideration of a vote previously taken.

The first rule that provided for reconsideration by the Senate of its previous action was the Senate rule of February 25, 1790. On that day the Senate adopted the report of the committee appointed "to prepare and report a rule determining in what cases a reconsideration of a vote of the Senate shall be admissible, and resolved

"That, when a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for a reconsideration of it." (Annals of Congress, First Congress, p. 950.)

On January 27, 1792, the Senate in executive session

"Ordered, that the President of the United States be furnished with an authenticated transcript of the executive records of the Senate, from time to time.

"Ordered, that no executive business, in future, be published by the Secretary of the Senate." (Executive Journal, vol. 1, pp. 99–100.)

At various times subsequent to the adoption of the first reconsideration rule of 1790, the Senate appointed committees to revise its rules and to report to the Senate the amendments which in their opinion were necessary, and on March 26, 1806, the Senate adopted a report containing amendments to the then existing rules. (Annals of Congress, Ninth Congress, first session, pp. 201–204.)

Rules 21 and 38 of the rules adopted on March 26, 1806, outline the procedure for the reconsideration of any action previously taken. These rules are as follows:

(Rule 21) "When a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof; but no motion for

the reconsideration of any vote shall be in order, after a bill, resolution, message, report, amendment, or motion, upon which a vote was taken, shall have gone out of the possession of the Senate, nor after the usual message shall have been sent from the Senate, announcing their decision; nor shall any motion for reconsideration be in order, unless made on the same day in which the vote was taken, or within the three next days of actual session of the Senate thereafter."

(Rule 38) "When any question may have been decided by the Senate, in which two-thirds of the members present are necessary to carry the affirmative, any member who votes on that side which prevailed in the question, may be at liberty to move for a reconsideration; and a motion for reconsideration shall be decided by a majority of votes."

The rule relating to furnishing the President with an authenticated transcript of the executive records of the Senate from time to time was amended on March 27, 1818. On that day the Senate in executive session adopted this resolution:

"*Resolved*, That in future, all nominations approved, or definitely acted on by the Senate, be by the Secretary returned to the President of the United States, from day to day, as such proceedings may occur, any rule or usage to the contrary notwithstanding." (Executive Journal, vol. 3, 1815–1829, p. 131.)

On January 3, 1820, the Senate amended rule 21 of the rules adopted on March 26, 1806, by deleting the phrase "nor after the usual message shall have been sent from the Senate" and the phrase "within the three next days of actual session of the Senate thereafter" and substituting in lieu of the latter phrase "within the two next days of actual session of the Senate thereafter.

48 Rule 21 of the rules of March 26, 1806, supra, was renumbered rule 19 by the rules adopted on January 3, 1820, and thereafter read as follows:

"When a question has been once made and carried, in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, amendment, or motion, upon which the vote was taken, shall have gone out of the possession of the Senate announcing their decision; nor shall any motion for reconsideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter." (Annals of Congress, Sixteenth Congress, first session, vol. 1, pp. 49-50.)

Rule 36 of the rules of March 26, 1806, was renumbered rule 35 by the rules of January 3, 1820.

The rule adopted March 27, 1818, providing that all nominations approved or definitely acted on by the Senate should be returned to the President from day to day as the proceedings occurred remained in force. But in addition, on January 5, 1829, the Senate adopted a resolution reading as follows:

"*Resolved*, That no paper, sent to the Senate by the President of the United States, or any executive officer, be returned, or delivered from the office of the Secretary, without an order of the Senate for that purpose." (Executive Journal, vol. 3, 1815–1829, pp. 621, 629.)

On February 18, 1843, the Senate adopted the following resolution:

"That nominations made by the President to the Senate, and which are neither approved nor rejected during the session at which

they are made, shall not be acted upon at any succeeding session without being again made by the President." (Executive Journal, vol. 6, 1841–1845, pp. 171–172.)

On April 6, 1867, the Senate rules relating to reconsideration of actions previously taken, were amended with respect to confirmation or rejection of a nomination. For the first time the Senate in its standing rules made a distinction between the conditions under which the reconsideration of a vote confirming or rejecting a nomination could be had and the reconsideration of other actions taken by the Senate. This was an amendment to rule 19, supra, and renumbered rule 20, which with the amendments, which are in italics, thereafter read as follows:

"20. When a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, amendment, or motion upon which the vote was taken shall have gone out of the possession of the Senate, announcing their decision, *except a resolution confirming or rejecting a nomination by the President;* nor shall any motion for reconsideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter; *but a motion to reconsider a vote upon a nomination shall always, if the resolution announcing the decision of the Senate has been sent to the President, be accompanied by a motion requesting the President to return the same* to the Senate." (Executive Journal, vol. 15, part 2, p. 649.)

And on the same day the resolution adopted March 27, 1818, supra, was amended so that the words "from day to day as such proceedings may occur," was stricken out and the following substituted in lieu thereof; "On the next day after such action is had, unless otherwise ordered by the Senate." (Executed Journal, vol. 15, part 2, p. 649.) The amended rule became part of rule 43, which thereafter read;

"43. * * * all nominations approved or definitely acted on by the Senate shall be returned by the Secretary on the next day after such action is had, unless otherwise ordered by the Senate * * *."

On March 25, 1868, the Senate adopted a new set of standing rules. Under this revision rule 19, adopted January 3, 1820, as amended April 6, 1867, and renumbered rule 20, supra, read as follows:

"20. When a question has been made and carried in the affirmative or negative, *whether previously reconsidered or not*, it shall be in order for any Senator of the majority to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after the bill, resolution, message, report, amendment, or motion upon which the vote was taken shall have gone out of the possession of the Senate, announcing their decision, except a resolution confirming or rejecting a nomination by the President; nor shall any motion for reconsideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter; but a motion to reconsider a vote upon a nomination shall always, if the resolution announcing the decision of the Senate has been sent to the President, be accompanied by a motion requesting the President to return the same to the

Senate. When any question may have been decided by the Senate, in which two-thirds of the Senators present are necessary to carry the affirmative any Senator who votes on that side which prevailed in the question may be at liberty to move for a reconsideration; and a motion for reconsideration shall be decided by a majority of votes. *But no motion to reconsider a vote upon a motion to reconsider shall be in order at any time.*" (Senate Journal, Fortieth Congress, second session, Ser. No. 1315, pp. 341, 342.)

The provisions in italics are new. The remaining provisions are merely a compilation of the provisions which appear in rule 21 adopted March 26, 1806, as amended January 3, 1820, and April 6, 1867, and in rule 38 of the rules adopted March 26, 1806, supra.

Rule 43 of the rules adopted March 25, 1868, contained modifications relating to the rule to return to the President nominations approved or definitely acted on, which rule read as follows:

"Nominations approved or definitely acted on by the Senate shall not be returned by the Secretary of the Senate to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate. The President of the United States shall, from time to time, be furnished with an authenticated transcript of the executive records of the Senate, but no further extract from the Executive Journal shall be furnished, except original treaties, transmitted to the Senate by the President of the United States, or any executive officer, shall be returned or delivered from the office of the Secretary of the Senate, without an order of the Senate for that purpose." (Senate Journal, Fortieth Congress, second session, Ser. No. 1315, p. 346.)

The rules adopted March 25, 1868, also contained in rule 37 the following provisions:

"* * * Nominations neither approved nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made by the President; and if the Senate shall adjourn or take a recess for more than thirty
51 days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned to the President, and shall not be afterwards acted upon, unless again submitted to the Senate by the President; and all motions pending to reconsider a vote upon a nomination shall fall on such adjournment or recess; and the Secretary of the Senate shall thereupon make out and furnish to the heads of departments and other officers the list of nominations rejected or not confirmed, as required by law." (Senate Journal, ibid., p. 345.)

On January 7, 1877, the Senate adopted a new set of standing rules. These rules contained the following provisions relating to the confirmation or rejection of nominations and the reconsideration thereof, and also reconsideration of other previous actions of the Senate:

"20. When a question has once been decided by a vote of the Senate, whether that vote be determined by a majority or by two-thirds of the Senate, any Senator voting on that side which prevailed may enter a motion or move for a reconsideration thereof, at any time on the same day on which the vote was taken, or on either of

the next two days of actual session thereafter; and all motions to reconsider shall be decided by a majority of the Senate.

"When a bill, resolution, report, amendment, order, or message, upon which a vote has been taken, shall have gone out of the possession of the Senate and been communicated to the House of Representatives, the motion to reconsider such vote shall be accompanied by a motion to request the House to return the same to the Senate; which last motion shall be acted upon immediately, and determined without debate, and, when determined in the negative, shall be held to be a final disposition of the motion to reconsider.

* * * * * * * *

"21. If the Senate shall refuse to reconsider a vote, or if, upon the reconsideration of a vote, it shall reaffirm its first decision of the question, no further motion to reconsider shall be in order, unless by unanimous consent. And every motion to reconsider a vote taken upon any amendment or other question connected with a subject under consideration shall be decided at once, and a motion to reconsider may be laid on the table without affecting the question in reference to which the same may be made. And if carried, shall be held to be a final disposition of such motion.

* * * * * * * *

"72. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered by the Senate, be referred to appropriate committees, and the
52 final question on every nomination shall be, 'Will the Senate advise and consent to this nomination?' which question shall not be put on the same day on which the nomination is received, nor the day on which it may be reported by a committee, unless by unanimous consent of the Senate.

"73. All information communicated or remarks made by a Senator when acting upon nominations, concerning the character or qualifications of the person nominated, also all votes upon any nomination, shall be kept secret. If, however, charges shall be made against a person nominated, the committee may, in its discretion, notify such nominee thereof, but the name of the person making such charges shall not be disclosed. The fact that a nomination has been made, or that it has been confirmed or rejected, shall not be regarded as a secret.

"74. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but if a notification shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion.

"75. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate.

"76. When the Senate shall adjourn or take a recess for more than thirty days, all motions to reconsider a vote upon a nomination which has been confirmed or rejected by the Senate, which shall be pending at the time of taking such adjournment or recess, shall fall; and the Secretary shall return all such nominations to the President as confirmed or rejected by the Senate as the case may be.

"77. Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall not again be considered unless they shall again be made to the Senate by the President.

53 "78. The President of the United States shall, from time to time, be furnished with an authenticated transcript of the executive records of the Senate, but no further extract from the Executive Journal shall be furnished, except by special order of the Senate; and no paper, except original treaties transmitted to the Senate by the President of the United States, and finally acted upon by the Senate, shall be delivered from the office of the Secretary without an order of the Senate for that purpose." (Senate Journal, Forty-fourth Congress, first session, Ser. No. 1717, pp. 116, 127, 128.)

The Senate on January 11, 1884, adopted a new set of standing rules effective January 21, 1884. In this revision the Committee on Rules merely compressed rules 72 to 77, inclusive, of the rules of January 7, 1877, into rule 38 and numbered each of these rules paragraphs 1 to 6, respectively. Rule 78 of the rules of January 7, 1877, was renumbered XXXIX. (Senate Journal, Forty-eighth Congress, first session, Ser. No. 2161, pp. 145–160.)

On January 18, 1929, the Senate amended paragraph 2 of Rule XXXVIII by providing that thereafter all business should be transacted in open session unless the Senate in closed session by a majority vote determined that a particular nomination should be considered in closed executive session. (Congressional Record, Seventy-first Congress, first session, vol. 71, part 3, pp. 3054, 3055.)

SENATE, WHITE HOUSE AND DEPARTMENTAL PRECEDENTS

INTRODUCTION

A list of precedents for the reconsideration by the Senate of its vote confirming or rejecting a nomination after the notification of the President of its action thereon was compiled in the legislative reference service of the Library of Congress at the request and with the cooperation of counsel for both parties in this cause. This list, printed in the form of a pamphlet entitled "Senate Precedents," was made part of the record of the Supreme Court of the District of Columbia. The information therein contained was supplemented by an agreement of counsel presenting additional facts disclosed by the registers of nominations or appointments at the executive offices of the White House and, in certain instances, by the records of the particular department concerned. This supplemental information was also made a part of the record of the Supreme Court of the District of Columbia by order of court. For the purpose of greater clarity and convenience, counsel for both parties have stipulated to combine the information contained in both of these documents.

In this compilation reference is made to three sources of information: the Senate Executive Journal, the records in the executive offices of the White House and the records of the department concerned.

1. The Senate Executive Journal.

The Senate Executive Journal contains the official record of proceedings of the United States Senate in executive session.
55 The material set forth under this heading is taken from the record contained in the published Executive Journals of the Senate from 1829 to 1901, and the Manuscript Journals from 1901 to date. Reliance has in general been placed on the indexes to these journals, on account of the length of time that would necessarily be consumed in a careful page-by-page reading of the journals themselves. For the most part the indexes are very complete and reliable, but in a few cases (chiefly during a part of the Civil War period) it was found necessary to supply gaps and correct inaccuracies in them. No attempt has been made to find precedents for the period prior to 1829, both because the indexes for that period are so constructed as to be of no use for the purpose, and because the discussion in the Hill case in 1830 would seem to imply that there were no precedents earlier than it. It has not been possible in every case to be certain whether or not the President was notified of the Senate's action; all cases have been included in the list of precedents, unless it seems reasonably certain that he was not so notified. Where it is stated that no subsequent proceedings are recorded in the journal the statement is based on the absence of notations in the indexes of the journal. In most cases where a yea and nay vote is recorded in the Executive Journals, the figures are given in the list, the affirmative vote being given first in each instance. References to the volume and page of the Executive Journals are given in parentheses in connection with each fact taken from these journals.

2. Records in executive offices of the White House

At the White House there are twenty bound volumes in which
56 records of nominations and appointments during the period March 4, 1869, to March 4, 1913, have been kept. With the exception of the two volumes beginning with March 4, 1869, which extend to March 4, 1877, each volume covers a period of four years; but for each period of four years there are two volumes. One of these volumes is labeled either "Register of Appointments made by the President—Diplomatic, Military, etc.," or "Register of Nominations made by the President—Diplomatic, Military, etc." This volume contains records of nominations and appointments which do not relate to some particular locality in the United States. The other volume is labeled either "Register of Appointments made by the President—States" or "Register of Nominations made by the President—States." This volume contains records of nominations and appointments relating to a particular State, such as postmasters, judges, United States attorneys, registers of land offices, etc. The volume labeled "States" and the volume labeled "Diplomatic, Military, etc.," are mutually exclusive; they supplement each other.

For each person recorded in these volumes spaces are provided for entries under the following headings: "Names of persons appointed" or "Name"; "Under which department" or "Department"; "Office to which appointed" or "Office"; "Locality of the office" (if any); "Nominated"; "Action of Senate" or "Confirmed"; "Date of commission" or "Commissioned" and "Remarks."

Beginning with March 4, 1913, the record of each nomination is kept on an individual card. These cards provide space for
57 entries under substantially the same headings as appear in the bound volumes described above.

Beginning with March 4, 1929, no record is kept on the cards of the date of commission with respect to postmasters. It should also be noted that no record is kept of certain minor appointments, such as assistant dental surgeons in the Navy, mentioned at page 105 of this compilation.

3. Departmental records

The records of the particular department to which an appointment appertains are referred to when deemed necessary or apposite.

There has also been inserted in this compilation at appropriate places the various rules adopted by the Senate from February 25, 1790, to the present date, in so far as these rules relate to the reconsideration of action previously taken by it, and more specifically to the reconsideration of action taken on a nomination. A detailed survey of these rules was presented by the Supreme Court of the District of Columbia in an appendix to its opinion.

Collection and preparation of the information contained in this pamphlet has been made possible through the efforts of Mr. Walter H. McClenon, of the legislative reference service, Library of Congress, Washington, D. C., Charles Poletti, Esq., 15 Broad Street, New York, N. Y., Erwin N. Griswold, Esq., Department of Justice, Wash-
58 ington, D. C., and Ernest Scott, Esq., 2225 Land Title Building, Philadelphia, Pa.

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ALEXANDER J. GROESBECK.
GEORGE WHARTON PEPPER.

59 RULES AND PRECEDENTS

RULES FROM 1790 TO 1843

On February 25, 1790, the Senate adopted the following rule (Senate Journal, vol. 1, 1789–1793, p. 116; Annals of Congress, First Congress, Gales, 1834 ed., p. 949):

"*Resolved*, That, when a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for a reconsideration of it."

On January 27, 1792, the Senate further (Executive Journal, vol. 1, 1789–1805, pp. 99–100)

"*Ordered*, That the President of the United States be furnished with an authenticated transcript of the executive records of the Senate, from time to time.

"*Ordered*, That no executive business, in future, be published by the Secretary of the Senate."

The following rules were adopted by the Senate March 26, 1806 (Senate Journal, vol. 4, 1805–1811, pp. 66, 68; Annals of Congress, Ninth Congress, first session, pp. 201–204):

[Rule 21] "When a question has been once made, and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order, after a bill, resolution, message, report, amendment, or motion, upon which the vote was taken, shall have gone out of possession of the Senate, nor after the usual message shall have been sent from the Senate, announcing their decision; nor shall any motion for reconsideration be in order unless made on the same day in which the vote was taken, or within the three next days of actual session of the Senate thereafter."

[Rule 38] "When any question may have been decided by the Senate, in which two-thirds of the members present are necessary to carry the affirmative, any member who votes on that side which prevailed in the question, may be at liberty to move for a reconsideration; and a motion for reconsideration shall be decided by a majority of votes."

On March 27, 1818, the Senate adopted the following resolution (Executive Journal, vol. 3, 1815–1829, p. 131):

"*Resolved*, That in future, all nominations approved, or definitively acted on by the Senate, be by the Secretary returned to the President of the United States, from day to day, as such proceedings may occur, any rule or usage to the contrary notwithstanding."

60 On January 3, 1820, the Senate renumbered its rules; rule 38 was left unchanged, but given the new number 35; rule 21 was renumbered 19 and changed to read (Senate Journal, 1819–1820, p. 63; Annals of Congress, Sixteenth Congress, first session, vol. 1, pp. 48–52):

"When a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, amendment, or motion upon which the vote was taken, shall have gone out of the possession of the Senate, announcing their decision; nor shall any motion for reconsideration be in

order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter."[1]

On January 5, 1829, the Senate adopted the following resolution (Executive Journal, vol. 3, 1815–1839, pp. 621, 629):

"*Resolved*, That no paper, sent to the Senate by the President of the United States, or any executive officer, be returned, or delivered from the office of the Secretary, without an order of the Senate for that purpose."[2]

PRECEDENTS FROM 1830 TO 1843

61 Isaac Hill, Second Comptroller of the Treasury. Rejected, 15–33, April 12, 1830 (4:90).[3] Motion to reconsider unanimously held not in order April 14, because the President had been notified (4:93).

Edmund L. DuBarry, surgeon in Navy. Rejected April 4, 1842 (6:49). Return of resolution requested by Senate April 28 (6:61). Resolution returned by President May 3 (6:63; proceedings of May 9). Resolution rescinded and nomination confirmed July 15 (6:112).

Benjamin K. Pierce, lieutenant colonel, and Levi Whiting, major, in Army. Confirmed July 1, 1842 (6:99). Resolution rescinded and its return requested July 13 (6:107). [There is no record in the Journal as to any action by the President pursuant to this request.] Nominations again confirmed July 14 (6:110).

RESOLUTION OF FEBRUARY 18, 1843

On Feb. 18, 1843, the Senate adopted the following resolution (Executive Journal, 6:171):

"*Resolved*, That nominations made by the President to the Senate, and which are neither approved nor rejected during the session at which they are made, shall not be acted upon at any succeeding session without being again made by the President, and that such shall hereafter be the rule of the Senate."[4]

PRECEDENTS FROM 1843 TO APRIL 5, 1867

62 Isaac H. Wright, Navy agent at Boston. Confirmed Feb. 3, 1846 (7:41). Return of resolution requested Feb. 4 (7:43). The President replied, Feb. 5 (7:44):

"In pursuance with the request of the Senate in their resolution of the 4th instant, I 'return' herewith 'for their further action the resolution advising and consenting to the appointment of Isaac H. Wright as Navy agent at Boston.' It will be observed that the resolution of the Senate herewith returned contains the advice and consent of that body to the appointment of several other persons to other offices not embraced in their resolution of the 4th instant, and it being impossible to comply with the request of the Senate without communicating to them the whole resolution, I respectfully request that so far as it

[1] In "Rules for Conducting Business in the Senate of the United States, Washington, Wm. M. Belt, 1849," this rule is given without change as rule 28; no reference has however been found to the action of the Senate changing the numbering. The same publication gives as rule 44 what had been rule 38 in 1806 and rule 33 in 1828. In "Rules for Conducting Business in the Senate of the United States, Washington, A. O. P. Nicholson, Public Printer, 1868," rule 30 is given in the same form as in the 1849 publication; what had been rule 28, 38 or 44 (as above noted) was changed to rule 45. The resolution of 1818 quoted above does not appear to be included in the rules adopted in 1820, but it is included in the 1849 compilation as a part of rule 43, and in the 1868 compilation as a part of rule 42.

[2] In the 1849 compilation of Senate rules referred to above, this is incorporated as a part of rule 42; in the 1868 compilation, as a part of rule 43.

[3] This reference is to the volume and page, respectively, of the Executive Journal of the Senate. Similar references to other cases are to the same source.

[4] In the 1849 compilation referred to above, this is incorporated as a part of rule 36; in the 1868 compilation, as a part of rule 37.

relates to the other cases than that of Mr. Wright it may be returned to me.

JAMES K. POLK."

Resolution as to Wright reconsidered and nomination referred to Committee on Naval Affairs Feb. 5 (7:45). March 10, "Mr. Fairfield, from the Committee on Naval Affairs, to whom was
63 recommitted, on the 5th February, the nomination of Isaac H. Wright, reported." (7:53.) Nomination withdrawn May 28 (7:79).

Edwin R. Merrifield, second lieutenant in Army. Confirmed June 17, 1848 (7:431). Return of resolution requested June 26 (7:435). Resolution returned and reconsidered June 29 (7:437, 438). [No subsequent proceedings recorded in the Journal.]

Stephen W. Kearney, brevet major general; Henry S. Turner, brevet major; William H. Emory and William H. Warner, brevet captains, in Army. Confirmed June 27, 1848 (7:436). President requested June 28 "to return to the Senate the list of California brevets confirmed by the Senate on yesterday, the said brevets having been confirmed by mistake (mixed with others), and without having been read, and without having been reported for confirmation by the Military Committee" (7:437). List returned and reconsidered June 29 (7:437, 438). Nominations of Turner, Emory, and Warner confirmed July 8, but vote on Turner reconsidered same day (7:448). Nomination of Kearney confirmed, 32–14, Aug. 9 (7:473). [No subsequent proceedings as to Turner recorded in the Journal.]

James A. Patterson, Indian agent for California. Confirmed Feb. 27, 1856 (10:58). Return of resolution requested Feb. 29 (10:59). Resolution returned March 5 (10:62; proceedings of March 11). Reconsidered and recommitted March 11 (10:63). Reported and again confirmed April 18 (10:78).

Robert Burns, collector of customs at Passamaquoddy, Me. Confirmed Dec. 22, 1857 (10:278). Return of resolution requested Dec. 23 (10:278). Resolution returned, reconsidered, and recommitted Jan. 6, 1858 (10:280–281). Reported and again confirmed Feb. 10 (10:304).

William S. Rowland, consul at Riga. Confirmed March 3, 1858 (10:332). Return of resolution requested and motion to reconsider entered March 8 (10:337). Resolution returned March 10 (10:340). Motion to reconsider withdrawn April 7 (10:359).

64 James Simons, surgeon in Army. Confirmed, 28–15, March 5, 1859 (11:76). Motion to reconsider entered and return of resolution requested March 7 (11:79–80). Resolution returned March 8 (11:88). Motion to reconsider failed, 20–23, March 9 (11:93).

Ralph Gurnee, collector of customs at Sackett's Harbor, N. Y. Confirmed Feb. 1, 1861 (11:257). Motion to reconsider entered and return of resolution requested Feb. 6 (11:258). Resolution returned Feb. 7 (11:266; proceedings of Feb. 12). Reconsidered Feb. 12 (11:271). [Cornelius W. Inglehart nominated to same office March 28 (11:358).]

Christopher Gore Ripley, secretary of legation at Brussels. Confirmed March 16, 1861 (11:309). Motion to reconsider entered and

return of resolution requested March 18 (11:312). Resolution returned March 19 (11:314). Reconsidered and laid on table March 20 (11:319).

Elisha O. Crosby, minister resident to Guatemala. Confirmed March 22, 1861 (11:328). Motion to reconsider entered and return of resolution requested March 23 (11:337). Resolution returned March 25 (11:339). Motion to reconsider failed March 26 (11:350).

Scott W. Updike, deputy postmaster at Rochester, N. Y. Confirmed, 20–19, July 26, 1861 (11:485). Return of resolution requested and motion to reconsider entered July 27 (11:487). Resolution returned July 30 (11:489; proceedings of July 31). Motion to reconsider failed, 8–27, July 31 (11:497).

Daniel Evans, consul at Bilbao. Confirmed Jan. 22, 1862 (12:96). Return of resolution requested Jan. 24 (12:99). Resolution returned Jan. 25 (12:99; proceedings of Jan. 27). Resolution sent back to President March 3 (12:146).

John Tucker, Assistant Secretary of War. Confirmed Jan. 29, 1862 (12:104). Return of resolution requested and motion to reconsider entered Jan. 30 (12:105). Resolution returned Jan. 31 (12:106; proceedings of Feb. 3). [No subsequent proceedings recorded in the Journal.]

Charles Mundee, Assistant Adjutant General, and William H. Ritter, paymaster, in Army. Rejected March 6, 1862 (12:155). Return of resolution requested and motion to reconsider entered March 13 (12:162–163). Resolution returned March 18 (12:169). Resolutions reconsidered March 21 (12:179). [No subsequent proceedings recorded in the Journal.]

65 Fitz-John Porter, brigadier general of Volunteers. Confirmed March 7, 1862 (12:157). Return of resolution requested and motion to reconsider entered March 13 (12:163). Resolution returned March 18 (12:169). Motion to reconsider failed April 28 (12:270–271).

Max Einstein, consul at Nuremberg. Rejected March 19, 1862 (12:172). Return of resolution requested and motion to reconsider entered March 21 (12:178–179). [No subsequent proceedings recorded in the Journal.]

Thomas Clowes, postmaster at Troy, N. Y. Confirmed, 19–18, March 20, 1862 (12:175). Return of resolution requested and motion to reconsider entered March 21 (12:178). Resolution returned March 27 (12:194). Motion to reconsider failed, 15–21, June 12 (12:345).

Jefferson H. Nones, Assistant Adjutant General, and John K. Russell, assistant quartermaster, of Volunteers. Confirmed March 24, 1862 (12:183). Return of resolution requested and motion to reconsider entered March 26 (12:191). Resolution returned March 28 (12:196; proceedings of March 31). Motion to reconsider confirmation of Nones laid on table June 12 (12:346). [No subsequent proceedings in the case of Russell recorded in the Journal.]

Thomas B. Catlin, brigade surgeon of Volunteers. Confirmed April 4, 1862 (12:215). Return of resolution requested and motion to reconsider entered April 7 (12:222; name spelled "Kettle"). Resolution returned April 8 (12:223). Motion to reconsider laid on table June 12 (12:346).

Charles C. Lathrop, collector of customs at New Orleans. Confirmed May 1, 1862 (12:273). Return of resolution requested and motion to reconsider entered May 5 (12:281). Resolution returned, reconsidered and recommitted May 14 (12:287–288). [No subsequest proceedings recorded in the Journal.]

66 J. Napoleon Zerman, brigadier general of Volunteers. Confirmed May 5, 1862 (12:281). Return of resolution requested and motion to reconsider entered May 6 (12:282). Resolution returned May 12 (12:284). Reconsidered and nomination laid on the table June 12 (12:345–346). Nomination withdrawn June 18 (12:684).

Thomas P. Campbell and George Boal, assessors for 17th and 18th districts of Pennsylvania. Confirmed Feb. 3, 1863 (13:112, 113). Return of resolution requested and motion to reconsider entered Feb. 6 (13:117). Resolution returned and reconsidered Feb. 9 (13:122, 124). Rejected Feb. 19 (13:145).

A. L. Greer, assessor for fourth district of Kentucky. Confirmed Feb. 3, 1863 (13:112, 113). Return of resolution requested Feb. 9 (13:123). Resolution returned Feb. 12 (13:127). Reconsidered Feb. 18 (13:144). Rejected Feb. 19 (13:145).

James L. Cramer, additional paymaster of Volunteers. Confirmed Feb. 19, 1863 (13:146, 150). Return of resolution requested Feb. 21 (13:159). Resolution returned Feb. 24 (13:163; proceedings of Feb. 25). [No subsequent proceedings recorded in the Journal.]

Charles A. Henry, assistant quartermaster of Volunteers. Confirmed Feb. 27, 1863 (13:199). Return of resolution requested and motion to reconsider entered March 3 (13:200). Resolution returned March 6 (13:221) to special session of the Senate, 38th Congress. [No subsequent proceedings recorded in the Journal.]

John F. Reynolds, George Sykes, and Abner Doubleday, major generals of Volunteers. Confirmed March 9, 1863 (13:261, 262). Return of resolution requested and motion to reconsider entered March 10 (13:274). Motions to reconsider withdrawn March 11 (13:281).

67 Charles K. Graham, brigadier general of Volunteers. Confirmed March 9, 1863 (13:262). Return of resolution requested and motion to reconsider entered March 10 (13:274). [Resolution probably returned by President March 11; see 13:279.] Resolution sent back to President March 11 (13:280).

Frank Wheaton, brigadier general of Volunteers. Confirmed March 9, 1863 (13:262). Return of resolution requested and motion to reconsider entered March 10 (13:274). Motion to reconsider withdrawn March 12 (13:295).

Waldemeier Krzyzanowski, brigadier general of Volunteers. Confirmed March 9, 1863 (13:262). Return of resolution requested and motion to reconsider entered March 11 (13:281). Resolution returned March 12 (13:289). Reconsidered and laid on table March 13 (13:306).

Gordon Granger, major general of Volunteers. Confirmed March 11, 1863 (13:281, 283). Return of resolution requested and motion to reconsider entered March 13 (13:310). Resolution returned March 13 (13:308). [No subsequent proceedings recorded in the Journal.]

William C. Bailey, assistant quartermaster with rank of captain. Confirmed March 11, 1863 (13:282, 283). Resolution returned "according to the request of the Senate" March 13 (13:308). Resolution reconsidered and nomination rejected March 13 (13:310).

Henry H. Sibley, brigadier general of Volunteers. Rejected, 17–21, March 11, 1863 (13:283). Return of resolution requested and motion to reconsider entered March 12 (13:298). Resolution returned March 12 (13:298; proceedings of March 13). Reconsidered March 13 (13:310). [No subsequent proceedings during the special session recorded in the Journal.] Renominated Dec. 31 (13:349; proceedings of Jan. 7, 1864). Confirmed, 22–14, March 22, 1864 (13:457). Return of resolution requested and motion to reconsider entered March 23 (13:458). Resolution returned March 25 (13:459). Reconsidered and sent back to President with request for modification March 25 (13:461). Renominated March 28 (13:464; proceedings of March 30). Confirmed again April 7 (13:479).

68 Hector Tyndale, brigadier general of Volunteers. Rejected March 11, 1863 (13:283). Return of resolution requested and motion to reconsider entered March 13 (13:306). Resolution returned and reconsidered and nomination confirmed March 13 (13:308, 310).

Paul B. Goddard, surgeon of Volunteers. Confirmed March 12, 1863 (13:296). Return of resolution requested and motion to reconsider entered March 13 (13:308). [No subsequent proceedings recorded in the Journal.]

James Cull, Hillary C. Spalding, and Thomas I. Williams, justices of the peace for Washington County, D. C. Rejected March 12, 1863 (13:296). Return of resolution requested and motions to reconsider entered March 13 (13:302). Resolution returned March 13 (13:307). Resolution as to Williams reconsidered and nomination confirmed March 14 (13:312). [No subsequent proceedings as to Spalding are recorded in the Journal, but Cull was renominated Jan. 5, 1864 (13:325; proceedings of Jan. 7); referred to Committee on District of Columbia Jan. 7 (13:364).

Thomas C. Donn, justice of the peace for Washington County, D. C. Rejected March 12, 1863 (13:296). Return of resolution requested, motion to reconsider entered, and resolution returned March 14 (13:312). [No subsequent proceedings during the special session recorded in the Journal.] Renominated Jan. 12 (?), 1864 (13:369; proceedings of Jan. 11). Referred to Committee on District of Columbia Jan. 11 (13:370). [No subsequent proceedings recorded in the Journal.]

Alfred W. Ellett, brigadier general of Volunteers. Rejected, return of resolution requested, and motion to reconsider entered March 12, 1863 (13:296). Resolution returned March 12 (13:299; proceedings of March 13). Reconsidered and confirmed, 24–11, March 13 (13:306–307).

Andrew Wylie, Justice of Supreme Court of District of Columbia. Confirmed, 24–13, March 12, 1863 (13:297). Return of resolution requested and motion to reconsider entered March 13 (13:302–303). Resolution returned and reconsidered March 13 (13:307, 308). Recess appointment given March 18, 1863 (13:325; proceedings of Jan. 7, 1864).

69 Horatio G. Wright, major general of Volunteers. Rejected, 15–20, March 12, 1863 (13:297). Return of resolution requested, motion to reconsider entered, and resolution returned March 13 (13:308, 310). [A new nomination made May 10, 1864, was confirmed May 12 (13:539–540).]

Orsamus H. Irish, superintendent of Indian affairs for Utah. Confirmed Feb. 2, 1864 (13:389). Return of resolution requested and motion to reconsider entered Feb. 4 (13:390–391). Resolution returned Feb. 9 (13:393; proceedings of Feb. 10). Motion to reconsider withdrawn Feb. 17 (13:407).

Ralph S. Dorr, receiver of public moneys for San Francisco land district. Confirmed Feb. 3, 1864 (13:390). Return of resolution requested and motion to reconsider entered Feb. 4 (13:391). Resolution returned Feb. 9 (13:393; proceedings of Feb. 10). Reconsidered and recommitted Feb. 10 (13:401). Reported and again confirmed Feb. 17 (13:405).

Allen McKane, paymaster of Volunteers. Confirmed Feb. 23, 1864 (13:416). Return of resolution requested and motion to reconsider entered Feb. 26 (13:424). [No subsequent proceedings recorded in the Journal.]

Frederick Baggs, assistant quartermaster of Volunteers. Confirmed Feb. 29, 1864 (13:429). Nomination withdrawn Feb. 29 (13:430; proceedings of March 1); message referred to Committee on Military Affairs and the Militia March 1 (13:431). Return of resolution requested and motion to reconsider entered March 1 (13:431). [No subsequent proceedings recorded in the Journal.]

Henry Denlinger, collector of internal revenue for Oregon. Confirmed March 2, 1864 (13:433). Return of resolution requested and motion to reconsider entered March 7 (13:434). Resolution returned March 9 (13:441). Motion to reconsider withdrawn March 15 (13:444). Nomination withdrawn and Medoram Crawford nominated to same office April 28 (13:508; proceedings of May 4). Crawford confirmed May 7 (13:525).

70 Joseph K. Barnes, medical inspector general. Confirmed March 2, 1864 (13:433). Return of resolution requested and motion to reconsider entered March 7 (13:434). The President replied March 10 (13:442; proceedings of March 15):

"In compliance with a resolution of the Senate dated March 2d, 1864, I return to the Senate the resolution advising and consenting to the appointment of Medical Inspector Joseph K. Barnes to be medical inspector general with the rank of colonel, in the Army of the United States, August 10, 1863, vice Perley, resigned.

"The following indorsement by the honorable Secretary of War will be found upon the resolution:

"'The within resolution was transmitted by the President to the War Department on the third day of March.

"'The commission of Surgeon Barnes (and others confirmed) was on the 3d made out and executed, and his was delivered on the fifth day of March to Surgeon Barnes.

"'EDWIN M. STANTON,
"'*Sec. of War.*

"'WAR DEPARTMENT, *March* 10, 1864.'

"To which I respectfully call the attention of the Senate.

"ABRAHAM LINCOLN."

"On motion by Mr. Johnson he had leave to withdraw his motion, submitted the 7th March, that the resolution advising and consenting to the appointment of Joseph K. Barnes be reconsidered." (13:541; May 12.)

Granville E. Johnson, aide-de-camp with rank of major. Confirmed March 8, 1864 (13:439). Return of resolution requested and motion to reconsider entered March 9 (13:441). Resolution returned March 14 (13:443; proceedings of March 15): [No subsequent proceedings recorded in the Journal.]

71 Henry B. Seely, lieutenant commander in Navy. Confirmed March 18, 1864 (13:448). Return of resolution requested and motion to reconsider entered March 21 (13:454). Resolution returned March 24 (13:458; proceedings of March 25). Nomination returned to President April 1 (13:448, 470) on the ground that the grade was "already full, as provided by law," so as to leave no vacancy to which Seely "can be legally appointed." Renominated April 5 (13:477; proceedings of April 7). Nomination returned to President May 7 (13:526).

Walter Abbot, La Rue P. Adams, Albert S. Barker, J. R. Bartlett, jr., O. A. Batcheller, Charles C. (or F.) and Henry J. Blake, William R. Bridgman, George M. Brown, Richard S. Chew, Charles S. Cotton (or Colton), H. T. French, Gouverneur K. Haswell, Edward C. Hazeltine, H. L. Johnson, Charles D. Jones, E. N. Kellogg, A. H. McCormick, Morrill Miller, F. J. Naile, F. Pearson, John H. and John J. Read, H. B. Rumsey, M. W. Sanders, Silas W. Terry, C. W. Tracy, James Wallace, D. D. Wemple, and G. W. Wood, lieutenants; Charles Green, captain; Asaph Hall and William Harkness, professors of mathematics; and Caspar Schenck, paymaster in Navy. Confirmed March 18, 1864 (13:448). Return of resolution requested March 23 (13:458). Resolution returned March 28 (13:463; proceedings of March 30). [No further proceedings as to Hazeltine or Wallace apparently recorded in Journal; but see 13:905, 1245.] Green renominated April 5 (13:477; proceedings of April 7), and confirmed April 20 (13:498). Henry J. Blake and Chew renominated June 14 (13:588; proceedings of June 16) and confirmed June 30 (13:637, 641). All the others were renominated April 5 (13:478; proceedings of April 7) and confirmed April 21 (13:500).

C. M. Levy, assistant quartermaster of volunteers. Confirmed March 18, 1864 (13:449, 451). Return of resolution requested and motion to reconsider entered March 21 (13:454). Resolution returned March 24 (13:458; proceedings of March 25). Recommitted April 20 (13:498). [No subsequent proceedings recorded in the Journal.]

A. McDonald Lyon, paymaster in Army. Rejected, 6–32, March 22, 1864 (13:456). Return of resolution requested and motion to reconsider entered March 25 (13:460). Resolution returned March 29 (13:464; proceedings of March 30). [No subsequent proceedings recorded in the Journal.]

72 Marcus W. McCracken, commissary of subsistence in Volunteer Army. Confirmed April 7, 1864 (13:480). Return of resolution requested and motion to reconsider entered April 14 (13:490). Resolution returned April 18 (13:495). Motion to reconsider withdrawn May 4 (13:521).

Elisha H. Ludington, assistant inspector general of Army. Confirmed April 20, 1864 (13:498). Return of resolution requested and motion to reconsider entered April 21 (13:500). Resolution returned

April 23 (13:501; proceedings of April 27). Motion to reconsider withdrawn May 7 (13:526).

John H. Goddard, justice of the peace for Washington County, D. C. Confirmed May 18, 1864 (13:550, 551). Return of resolution requested and motion to reconsider entered June 7 (13:577). The President replied June 25 (13:625; proceedings of June 27):

"I have the honor to acknowledge the receipt of the resolution of the Senate, dated the 7th of June, requesting me to return to the Senate the resolution advising and consenting to the appointment of John H. Goddard to be justice of the peace in and for the county of Washington, and District of Columbia; and to state that on the 19th of May last, the resolution was sent to the Department of State, and a commission in accordance therewith issued to Mr. Goddard on the same day, the appointment being thus perfected, and the resolution becoming a part of the permanent records of the Department of State.

ABRAHAM LINCOLN."

[No subsequent proceedings recorded in the Journal.]

George E. Seney, paymaster of Volunteers. Confirmed May 28, 1864 (13:565). Return of resolution requested and motion to reconsider entered June 7 (13:577). Resolution returned June 11 (13:579; proceedings of June 13). Reconsidered and recommitted June 13 (13:587). Rejected June 30 (13:641).

John Edwards, brigadier general of Volunteers. Confirmed Feb. 14, 1865 (14:163, 167). Return of resolution requested and motion to reconsider entered Feb. 20 (14:176). Resolution returned Feb. 23 (14:194). [No subsequent proceedings recorded in the Journal.]

73 William P. Benton, collector of internal revenue for first district of Alabama. Confirmed Feb. 15, 1866 (14:561). Return of resolution requested and motion to reconsider entered Feb. 16 (14:561). Motion to reconsider withdrawn March 6 (14:587).

Benjamin F. Fisher, chief signal officer of Volunteers. Confirmed Feb. 23, 1866 (14:577). Return of resolution requested and motion to reconsider entered March 8 (14:591). Resolution returned March 9 (14:660; proceedings of March 12). Reconsidered and recommitted March 12 (14:660). Nomination subsequently withdrawn (14:1357).

W. Bonifant, marshal for district of Maryland. Rejected, 17–17, March 6, 1866 (14:587). Return of resolution requested and motion to reconsider entered March 8 (14:592). Resolution returned March 10 (14:659; proceedings of March 12). Reconsidered and confirmed March 12 (14:660).

George A. Benedict, deputy postmaster at Cleveland. Confirmed March 12, 1866 (14:661). Return of resolution requested and motion to reconsider entered March 16 (14:677). Resolution returned March 19 (14:690; proceedings of March 21). Motion to reconsider withdrawn April 26 (14:755).

Francis W. Sykes, direct tax commissioner for district of Alabama. Confirmed March 12, 1866 (14:661). Return of resolution requested and motion to reconsider entered March 16 (14:678). Resolution returned March 19 (14:690; proceedings of March 21). Reconsidered and recommitted March 21 (14:691). Reported adversely and again rejected April 10 (14:716).

Edward T. Parker, surveyor of customs at New Orleans. Rejected March 12, 1866 (14:661). Return of resolution requested and

motion to reconsider entered March 16 (14:678). Resolution returned March 19 (14:689; proceedings of March 21). Reconsidered and recommitted March 21 (14:691). Reported adversely April 23 (14:752). Confirmed May 2 (14:777).

John V. L. Findlay, collector of internal revenue for third district of Maryland. Rejected, 11–20, March 14, 1866 (14:677). Return of resolution requested and motion to reconsider entered March 16 (14:678–679). Resolution returned March 19 (14:690; proceedings of March 21). Motion to reconsider failed May 2 (14:777).

74 Edmund Murphy, assessor of internal revenue for first district of Louisiana. Rejected March 21, 1866 (14:690). Return of resolution requested and motion to reconsider entered March 22 (14:694). Resolution returned March 26 (14:696; proceedings of April 10). Motion to reconsider laid on table April 10 (14:717).

Bela P. Learned, second lieutenant in Army. Confirmed March 21, 1866 (14:691; see 14:648, 660). Return of resolution requested and and motion to reconsider entered March 22 (14:694). Resolution returned March 27 (14:696; proceedings of April 10). Reconsidered April 10 (14:717). Nomination withdrawn April 21 (14:750; proceedings of April 23).

Numerous brevet appointments in the Army were confirmed May 4, 1866 (14:781); return of resolution requested and motion to reconsider entered May 10 (14:808); resolution returned May 17 (14:820; proceedings of May 18); reconsidered and recommitted May 18 (14:823); nominations returned to President with request for modification June 27 (14:874); reported favorably July 13 (14:920); again confirmed July 14 (14:967–968). [It is not clear from the Journal whether or not any modification in the nominations had meanwhile been made, the names not being very clearly indicated.] In the case of James B. Fry, brevet major general, the return of the resolution of confirmation was requested and motion to reconsider entered July 19 (14:989–990); the resolution was returned July 23 (14:1043); the motion to reconsider failed July 28 (14:1175).

Albert B. Sloanaker, collector of internal revenue for first district of Pennsylvania. Confirmed May 14, 1866 (14:812, 813). Return of resolution requested and motion to reconsider entered May 15 (14:814). Resolution returned May 16 (14:820; proceedings of May 18). Reconsidered June 26 (14:872). Confirmed again July 5 (14:888). [The Journal does not indicate whether or not the President was ever notified of this confirmation.] Reconsidered, 16–13, and rejected July 10 (14:906–907). Return of resolution of rejection requested and motion to reconsider entered July 12 (14:908). Resolution returned July 14 (14:966). Motion to reconsider failed July 26 (14:1159–60).

75 John T. Tanner, collector of internal revenue for third district of Alabama. Confirmed May 23, 1866 (14:831). Return of resolution requested and motion to reconsider entered May 28 (14:833). Resolution returned May 31(?) (14:839; proceedings of May 30). Nomination recommitted May 30 (14:839). Reported favorably July 26 (14:1157). [The sequel is indicated by the following message of Jan. 2, 1867 (15:78):

"I nominate John T. Tanner to be collector of internal revenue, 3rd district of Alabama, he having been nominated to the Senate

in 1865,* confirmed by the Senate and the same recalled and no further action had upon the same. He was recommissioned during the recess of the Senate in 1866.

ANDREW JOHNSON."]

John H. Bryant, collector of internal revenue for fifth district of Illinois. Confirmed May 30, 1866 (14:841). Return of resolution requested June 4 (14:848). Resolution returned June 6 (14:850; proceedings of June 11). Motion to reconsider failed July 26 (14:1157).

Louis J. Czapkay, consul at Bucharest. Confirmed June 20, 1866 (14:868). Return of resolution requested and motion to reconsider entered June 26 (14:872). Resolution returned June 27 (14:880; proceedings of June 28). Reconsidered and recommitted July 10 (14:906). Reported without recommendation July 19 (14:988). Confirmed July 26 (14:1157–58).

Robert Clark, assessor of internal revenue for thirteenth district of Pennsylvania. Confirmed June 26, 1866 (14:872). Return of resolution requested and motion to reconsider entered June 27 (14:875). Resolution returned and motion to reconsider failed July 3 (14:886).

William G. McCandless, collector of internal revenue for twenty-third district of Pennsylvania. Confirmed, 23–9, July 13, 1866 (14:921). Return of resolution requested and motion to reconsider entered July 14 (14:967). Resolution returned July 17 (14:987; proceedings of July 19). Renominated Jan. 2, 1867 (15:80; proceedings of Jan. 14). Rejected Feb. 21 (15:239–240).

76 Leonard A. Harris and Samuel F. Cary, collectors of internal revenue for first and second districts of Ohio. Confirmed July 13, 1866 (14:921). Return of resolution requested and motion to reconsider entered July 14 (14:967). Resolution returned July 17 (14:987; proceedings of July 19). Motion to reconsider withdrawn July 23 (14:1044).

Joseph S. Wilson, Commissioner of General Land Office. Confirmed July 25, 1866 (14:1051). Return of resolution requested and motion to reconsider entered July 26 (14:1156). Resolution returned July 27 (14:1165). Reconsidered and nomination laid on table, 22–13, July 27 (14:1168). Nomination recommitted, 16–10, July 28 (14:1175). The President sent this message, Dec. 19 (15:58; proceedings of Dec. 20):

"I nominate Joseph S. Wilson, of the District of Columbia, who was commissioned during the recess of the Senate, to be Commissioner of the General Land Office."

George W. Rogers, postmaster at West Meriden, Conn. Confirmed July 25, 1866 (14:1051). Return of resolution requested and motion to reconsider entered July 26 (14:1159). Resolution returned and motion to reconsider failed July 27 (14:1167, 1168).

E. L. Cockrill and John M. Duke, collectors of internal revenue for eighth and ninth districts of Kentucky. Rejected Jan. 22, 1867 (15:136–137). Return of resolutions requested and motions to reconsider entered Jan. 26 (15:138). Resolutions returned Jan. 29 (15:139; proceedings of Feb. 1). Reconsidered and recommitted Feb. 1 (15:157). Reported adversely Feb. 6 (15:179). Both again rejected

*I. e., 1866.

Feb. 21 (15:239–240). Motion to reconsider rejection of Duke failed, 7–29, Feb. 23 (15:245–246).

William C. Binney, assessor of internal revenue for fifth district of Massachusetts. Confirmed Jan. 26, 1867 (15:139). Return of resolution requested and motion to reconsider entered Feb. 1 (15:157). Resolution returned Feb. 6 (15:177). Reconsidered and recommitted Feb. 21 (15:241). Reported adversely Feb. 23 (15:244). Rejected March 1 (15:281).

77 Basset Langdon, assessor of internal revenue for first district of Ohio. Rejected Jan. 26, 1867 (15:139). Return of resolution requested and motion to reconsider entered Feb. 1 (15:157). Resolution returned Feb. 5 (15:174; proceedings of Feb. 6). Motion to reconsider withdrawn, and resolution of rejection sent back to President Feb. 6 (15:178).

M. H. Beaumont, collector of customs at Perth Amboy, N. J. Rejected Jan. 26, 1867 (15:139). Return of resolution requested and motion to reconsider entered Feb. 1 (15:157). Resolution returned Feb. 5 (15:174; proceedings of Feb. 6). [No subsequent proceedings recorded in the Journal.]

William M. Fitzhugh, assessor of internal revenue for seventh district of Virginia. Confirmed Jan. 26, 1867 (15:139). Return of resolution requested and motion to reconsider entered Feb. 1 (15:156–157). Resolution returned Feb. 6 (15:177). Motion to reconsider failed Feb. 21 (15:241).

John W. Boyle, associate justice of Supreme Court of Dakota Territory. Confirmed Jan. 26, 1867 (15:139). Return of resolution requested and motion to reconsider entered Feb. 1 (15:157). Resolution returned Feb. 7 (15:182; proceedings of Feb. 8). Nomination reported favorably by the Committee on the Judiciary to which it "was recommitted, the 2d instant," Feb. 23 (15:245). Confirmed March 1 (15:280, 281).

Thomas W. Egan, collector of internal revenue for ninth district of New York. Rejected Jan. 26, 1867 (15:139). Return of resolution requested and motion to reconsider entered Feb. 6 (15:178). Resolution returned Feb. 8 (15:197; proceedings of Feb. 9). Motion to reconsider withdrawn Feb. 18 (15:208).

78 H. H. Heath, secretary of Territory of New Mexico. Confirmed Feb. 1, 1867 (15:156). Return of resolution requested and motion to reconsider entered Feb. 6 (15:178). The President replied Feb. 8 (15:197; proceedings of Feb. 9):

"I transmit a report from the Secretary of State in answer to the resolution of the Senate of the 6th instant, requesting the return of their resolution of the 1st instant, confirming the nomination of H. H. Heath as secretary of the Territory of New Mexico.

ANDREW JOHNSON.

"WASHINGTON, 8th *February*, 1867.

DEPARTMENT OF STATE,
Washington, February 8th, 1867.

"The Secretary of State, to whom was referred the resolution of the Senate of the 6th instant, requesting 'the President of the United States to return to the Senate the resolution of the 1st instant advising and consenting to the appointment of H. H. Heath to be secretary of

the Territory of New Mexico,' has the honor to state that the resolution referred to was received at this department on the 4th instant, that the commission was made out and sent to the Executive Mansion for signature, and has not been returned. The resolution of the 1st instant is herewith inclosed.

Respectfully submitted.

WILLIAM H. SEWARD."

Benjamin F. Coates, collector of internal revenue for eleventh district of Ohio. Rejected Feb. 6, 1867 (15:180). Return of resolution requested and motion to reconsider entered Feb. 9 (15:198). Resolution returned Feb. 12 (15:204; proceedings of Feb. 13). Reconsidered and confirmed Feb. 25 (15:268).

John A. Turley, assessor of internal revenue for eleventh district of Ohio. Rejected Feb. 8, 1867 (15:189). Return of resolution requested and motion to reconsider entered Feb. 9 (15:198). Resolution returned Feb. 12 (15:204; proceedings of Feb. 13). Motion to reconsider withdrawn Feb. 25 (15:268).

William Boardman, collector of internal revenue for seventh district of New York. Rejected Feb. 8, 1867 (15:189). Return of resolution requested and motion to reconsider entered Feb. 13 (15:205). Resolution returned Feb. 15 (15:207; proceedings of Feb. 18). Motion to reconsider withdrawn Feb. 18 (15:209).

79 William Byers, superintendent of Indian affairs for southern superintendency. Rejected Feb. 21, 1867 (15:239, 240). Resolution returned, "in compliance with the request of the Senate of the 23d instant," Feb. 26 (15:274; proceedings of Feb. 27). [James Wortham nominated March 13 (15:434) "vice William Byers, rejected."]

Lewis S. Hills, deputy postmaster at Salt Lake City. Rejected Feb. 21, 1867 (15:239, 240). Return of resolution requested Feb. 23 (15:245). Resolution returned Feb. 26 (15:274; proceedings of Feb. 27). [Anthony W. Street nominated March 16 (15:464) "in place of Lewis S. Hills, rejected by the Senate."]

Durbin Ward, United States attorney for Southern District of Ohio. Confirmed Feb. 21, 1867 (15:240). Return of resolution requested Feb. 23 (15:245). Resolution returned Feb. 26 (15:274; proceedings of Feb. 27). [No subsequent proceedings recorded in the Journal.]

Benjamin N. Bugby, assessor of internal revenue for fourth district of California. Confirmed Feb. 21, 1867 (15:240). Return of resolution requested Feb. 23 (15:245). Resolution returned Feb. 26 (15:274; proceedings of Feb. 27). Nomination withdrawn March 2 (15:283).

Eli P. Norton, solicitor for United States before Court of Claims. Confirmed Feb. 21, 1867 (15:240). Return of resolution requested Feb. 25 (15:268). Resolution returned March 2 (15:283). Motion to reconsider failed March 2 (15:336).

Numerous brevet appointments in the Army were confirmed Feb. 23, 1867 (15:246); return of resolutions requested Feb. 25 (15:268); resolutions returned March 1 (15:283; proceedings of March 2); reconsidered and recommitted March 2 (15:328); reported favorably and again confirmed March 2 (15:337).

Henry A. Starr, deputy postmaster at Milwaukee. Confirmed Feb. 23, 1867 (15:246). Return of resolution requested Feb. 25

(15:268). Resolution returned Feb. 28 (15:284; proceedings of March 2). Resolution sent back to President March 2 (15:339).

Westley Frost, assessor of internal revenue for twenty-first
80 district of Pennsylvania. Confirmed Feb. 23, 1867 (15:246). Return of resolution requested Feb. 27 (15:277). The President replied March 2 (15:284):

"I herewith transmit a report from the Secretary of the Treasury, in answer to the resolution of the Senate of 27th ult., requesting the return of their resolution of the 23d ult., consenting to the appointment of Westley Frost as assessor of internal revenue 21st district of Pennsylvania.

ANDREW JOHNSON.

WASHINGTON, *March* 2, 1867.

TREASURY DEPARTMENT, *March 1st*, 1867.

"Sir: I have to acknowledge the receipt of Senate resolution of the 17th ult., requesting return of the resolution of the 23d ult. consenting to the appointment of Westley Frost as assessor of int. rev. 21st district of Penn'a. I have to inform you that Mr. Frost qualified for the office and received his commission (with instructions to enter upon the duties at once) on the 26th ult.

"I am, very respectfully,

H. MCCULLOCH,
Secretary of the Treasury.

The PRESIDENT."

Senator Sherman submitted the following resolution March 25 (15:519):

"Whereas it appearing that on the 27th day of February last the Senate recalled its action on the nomination of Wesley Frost as assessor of the 21st district of Penna., and that he did not take the oath of office until the 2d day of March: Therefore

"*Resolved*, That the Secretary of the Treasury recall the commission of the said Frost until the action of the Senate upon his nomination."

Senator Sherman submitted another resolution April 1 (15:591) as follows:

"*Resolved*, That the Secretary of the Treasury be requested to recall the commission issued to Wesley Frost as assessor of internal revenue for the 21st district of Pennsylvania, it appearing that his confirmation was recalled before he received such commission or was sworn into office; and that the President be requested to return to the Senate the action of the Senate in the appointment of said Wesley Frost."

This resolution was rejected the same day, 14–23 (15:591).

81 Quincy D. Whitman, assessor of internal revenue for sixth district of Illinois. Rejected Feb. 23, 1867 (15:246, 247). Return of resolution requested Feb. 25 (15:268). Resolution returned March 1 (15:284; proceedings of March 2). Reconsidered and again rejected March 2 (15:329, 338).

Linus B. Birdsay, deputy postmaster at Meriden, Conn. Rejected Feb. 23, 1867 (15:247). Return of resolution requested Feb. 25 (15:268). Resolution returned March 2 (15:326). Reconsidered and confirmed March 2 (15:329).

Hampton B. Denman, superintendent of Indian affairs for northern superintendency. Confirmed Feb. 25, 1867 (15:268). Return of resolution requested, on motion of Senator Wade, Feb. 27 (15:277). Resolution returned March 1 (15:284; proceedings of March 2).

Resolution, on motion of Senator Wade, sent back to President March 2 (15:335).

James B. Carpenter, collector of customs at Cape Vincent, N. Y. Rejected Feb. 25, 1867 (15:268). Return of resolution requested Feb. 27 (15:277). Resolution returned March 1 (15:284; proceedings of March 2). Reconsidered and confirmed March 2 (15:328).

James W. Black, collector of internal revenue for sixth district of Missouri. Confirmed Feb. 27, 1867 (15:Index XXIX, CCXXIX). Return of resolution requested March 2 (15:329). Resolution returned March 2 (15:325). Resolution reconsidered March 2 (15:339). [The President sent the following message March 11 (15:412, proceedings of March 12):

"I nominate James W. Black to be collector of internal revenue 6th district of Missouri, appointed during the recess of the Senate in 1866, in place of Wm. A. Price, removed, nominated to the Senate during its last—confirmed—reconsidered, and no final action taken."]

Albert Zeiber, marshal for district of Oregon. Confirmed March 1, 1867 (15:280, 281). Return of resolution requested March 2 (15:333). Resolution returned March 2 (15:325). [No subsequent proceedings recorded in the Journal.]

James C. Coolidge, postmaster at Warsaw, Ill. Rejected March 1, 1867 (15:281). Return of resolution requested March 2 (15:329). Resolution returned March 2 (15:326). Reconsidered and confirmed March 2 (15:333).

82 James H. Chamberlain, assessor of internal revenue for fifth district of Maine. Confirmed March 2, 1867 (15:327, 328). Resolution returned, "agreeably to the request of the Senate of this date," March 2 (15:325). Reconsidered and recommitted March 2 (15:335). [No subsequent proceedings recorded in the Journal.]

S. L. Warren, United States attorney for Western District of Tennessee. Rejected March 2, 1867 (15:328). Resolution returned, "in compliance with the request of the Senate of this date," March 2 (15:325). Reconsidered and nomination laid on table March 2 (15:335).

William Allen, collector of internal revenue for ninth district of New York. Confirmed March 2, 1867 (15:332). Resolution returned, "in compliance with the request of the Senate of this date," March 2 (15:325). Resolution reconsidered March 2 (15:336). Renominated April 9 (15:677; proceedings of April 10). Nomination withdrawn April 19 (15:763).

John W. Frazier, assessor of internal revenue for first district of Pennsylvania. Confirmed and return of resolution requested March 2, 1867 (15:Index, CXIV, CCLXVII). Resolution returned March 2 (15:326). Reconsidered March 2 (15:336). [The President sent the following message March 13 (15:466):

"I nominate John W. Frazier to be assessor of internal revenue 1st district of Pennsylvania, appointed during the recess of the Senate in 1866, in place of John H. Taggart, nominated to the Senate during the last session and no action taken."]

Norman S. Andrews, marshal for Eastern district of Michigan. Rejected March 14, 1867 (15:452). Return of resolution requested

March 15 (15:462). Resolution returned March 16 (15:484; proceedings of March 19). Reconsidered and nomination confirmed March 27 (15:564–565).

John B. Bennett, register of land office at Nebraska City, Nebr. Rejected March 18, 1867 (15:469). Return of resolution requested March 19 (15:487). Resolution returned March 23 (15:502; proceedings of March 25). [Stewart McConiga nominated to same office "vice John B. Bennett, rejected," April 8 (15:664; proceedings of April 9).]

Benjamin Simpson, Indian agent in Oregon. Rejected March 19, 1867 (15:486). Return of resolution requested March 21 (15:494). Resolution returned March 23 (15:503; proceedings of March 25). Reconsidered and nomination confirmed March 25 (15:519).

83 Samuel H. Jones, marshal for Western District of Tennessee. Confirmed March 19, 1867 (15:486). Return of resolution requested March 21 (15:494). Resolution returned March23 (15:516). Reconsidered and consideration of nomination postponed March 30 (15:590). Nomination rejected April 5 (15:643).

Henry C. Witter, collector of internal revenue for twenty-third district of Pennsylvania. Rejected March 19, 1867 (See 15:1047, 1131). Return of resolution requested March 21 (15:494). Resolution returned March 23 (15:502; proceedings of March 25). [John M. Sullivan nominated to same office April 5 (15:647; proceedings of April 6).]

S. J. Wailes, naval storekeeper at Washington, D. C. Confirmed March 28, 1867 (15:571-572). Return of resolution requested March 29 (15:587). Resolution returned March 30 (15:588). Reconsidered March 30 (15:590). Nomination rejected April 3 (15:629). Motion to reconsider entered April 3 (15:630). Reconsidered and nomination again rejected, 14–19, April 5 (15:643). Motion to reconsider entered and return of resolution of April 5 requested April 8 (15:663). Resolution returned April 9 (15:672). Reconsidered and nomination confirmed April 19 (15:766). Motion to reconsider failed, 14–18, April 20 (15:782).

William A. Morton, collector of internal revenue for ninth district of Pennsylvania. Rejected March 28, 1867 (15:573). Return of resolution requested March 29 (15:587). Resolution returned March 30 (15:588). [Chauncey H. Millen nominated to same office April 6 (15:650; proceedings of April 8).]

A. C. Fisk, collector of internal revenue for third district of Louisiana. Confirmed March 28, 1867 (15:573). Return of resolution requested March 30 (15:936, 996). Resolution returned April 2 (15:599). On April 3 (15:630):

"Mr. Henderson moved that the Senate proceed to consider the motion submitted by him the 30th March last: That the Senate reconsider its resolution of the 28th March, advising and consenting to the appointment of A. C. Fisk.

"Whereupon

"Mr. Conkling raised the following question of order, viz: That the motion to reconsider is to be deemed as now made for the first time. It was not in order to make the motion nor to enter it during the last session of Congress, because the nomination had passed out of the possession of the Senate and was not returned during the session; and it cannot be made now, because it is too late in point of time,

and also because this is a new session, and the subject matter fell with the last session, and therefore not in order.

84 "The President pro tempore held that the point of order was well taken, and decided the motion of Mr. Hendricks not in order.

"From this decision Mr. Fessenden appealed to the Senate; and

"On the question, Shall the decision of the Chair stand as the judgment of the Senate?

"It was determined in the affirmative, { Yeas 18. Nays 14.

"On motion by Mr. Fessenden,

"The yeas and nays being desired by one-fifth of the Senators present,

"Those who voted in the affirmative are,

"Messrs. Buckalew, Cameron, Chandler, Cole, Conkling, Corbett, Doolittle, Henderson, Hendricks, Johnson, Morrill of Me., Nye, Patterson of Tenn., Pomeroy, Ross, Thayer, Van Winkle, and Yates.

"Those who voted in the negative are,

"Messrs. Conness, Cragin, Davis, Drake, Edmunds, Fessenden, Ferry, Howe, Morgan, Morrill of Vt., Morton, Trumbull, Willey, and Williams.

"So the decision of the Chair was sustained by the Senate."

William H. Craig, justice of the peace for Washington County, D. C. Confirmed April 3, 1867 (15:629). Return of resolution requested April 4 (15:634). Resolution returned April 6 (15:647). [No subsequent proceedings recorded in the Journal.]

Augustus W. Bradford, surveyor of customs for district of Baltimore. Confirmed, 22–16, April 4, 1867 (15:634–635). Motion to reconsider entered and return of resolution requested April 6 (15:649). Resolution returned April 10 (15:679). Reconsidered, 17–16, and nomination again confirmed, 19–17, April 16 (15:740).

Thomas Kilby Smith, consul at Panama. Confirmed April 5, 1867 (15:643). Motion to reconsider entered and return of resolution requested April 6 (15:649). Resolution returned April 8 (15:659). Reconsidered and recommitted April 11 (15:696). Reported favorably April 12 (15:697). Confirmed again April 15 (15:736).

85 RULES OF APRIL 6, 1867

On April 6, 1867 (Executive Journal 15:649) the Senate voted unanimously to insert in the 20th rule (rule 19 of 1820), after the word "decision," the words "Except a resolution confirming or rejecting a nomination by the President;" and, at the end, the words "But a motion to reconsider a vote upon a nomination shall always, if the resolution announcing the decision of the Senate has been sent to the President, be accompanied by a motion requesting the President to return the same to the Senate."

At the same time the Senate unanimously voted to strike out from the 43d rule (i. e., the resolution of March 27, 1818, cited above) the words "from day to day, as such proceedings may occur" and to insert instead the words "on the next day after such action is had, unless otherwise ordered by the Senate."

As amended, the rules are given as follows in "Rules of the Senate of the United States, and Joint Rules of the Two Houses, Washington, Government Printing Office, 1867":

"20. When a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, amendment, or motion upon which the vote was taken shall have gone out of the possession of the Senate, announcing their decision, except a resolution confirming or rejecting a nomination by the President; nor shall any motion for reconsideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter; but a motion to reconsider a vote upon a nomination shall always, if the resolution announcing the decision of the Senate has been sent to the President, be accompanied by a motion requesting the President to return the same to the Senate."

"43. The President of the United States shall, from time to time, be furnished with an authenticated transcript of the executive records of the Senate; and all nominations approved or definitely acted on by the Senate shall be returned by the Secretary on the next day after such action is had, unless otherwise ordered by the Senate; but no further extract from the executive journal shall be furnished except by special order; and no paper, except original treaties, transmitted to the Senate by the President of the United States, or any executive officer, shall be returned or delivered from the office of the Secretary without an order of the Senate for that purpose."

PRECEDENTS FROM APRIL 6, 1867, TO MARCH 24, 1868

86 Samuel M. Pollock, brigadier general by brevet.

Senate Executive Journal.—Confirmed April 8, 1867 (15:660). Motion to reconsider entered and return of resolution requested April 10 (15:681). Resolution returned April 11 (15:693). Reconsidered and recommitted April 11 (15:695). Reported adversely April 11 (15:696). Rejected April 13 (15:709).

White House Record.[5]—No record of this case was found.

Records of the War Department.[6]—Register of brevet commissions, volume 5, 1861 to 1867, page 120:

Names of officers	Samuel M. Pollock.
Brevet rank	Brig. Genl.
U. S. Army or Volunteers	U. S. Vols.
Date of rank	Mar. 13, 1865.
For what services performed	For faithful and meritorious services.
Name of President	Andrew Johnson.
Name of Secretary	Edwin M. Stanton.
When confirmed by Senate	Apl. 8, 1867.
Date of commission	Apl. 11, 1867.
Year of independence	91.
Whence issued	A. G. O.
Whither and when sent	
When acknowledged	
Remarks	

[Under these last three columns there appears this entry in red ink: Cancelled (rejected by the Senate).]

[5] Reference is made to White House Records when such have been found. These records are fully explained in the Introduction, *supra*, at page 32.

[6] In certain cases the records of the Departments concerned have been referred to; see the Introduction *supra*, at page 32.

Joseph N. Lewis, postmaster at Shelbyville, Ill. Confirmed April 10, 1867 (15:680). Motion to reconsider entered and return of resolution requested April 12 (15:697). Resolution returned April 15 (15:734). [The President sent the following message Dec. 18 (16:112): "I nominate William A. Trower to be deputy postmaster at Shelbyville, in the county of Shelby and State of Illinois, in place of Joseph N. Lewis."]

87 Garland C. Brodhead, receiver of public moneys at Boonville, Mo. Confirmed April 13, 1867 (15:709). Motion to reconsider entered April 16 (15:740). Resolution returned "agreeably to the request of the Senate of the 16th inst.," April 18 (15:757). Resolution sent back to President April 22 (15:885, 889).

Marshall F. Moore, secretary of Territory of Colorado. Rejected April 16, 1867 (15:741). Motion to reconsider entered and return of resolution requested April 17 (15:751). Resolution returned April 18 (15:757). Nomination withdrawn April 19 (15:762).

Columbus E. Nealy, consul at Tabasco. Rejected April 16, 1867 (15:741). Motion to reconsider entered and return of resolution requested April 17 (15:751). Resolution returned April 19 (15:762). Reconsidered and nomination confirmed April 19 (15:767).

Charles Abell, collector of internal revenue for first district of Pennsylvania. Rejected April 17, 1867 (15:750). Motion to reconsider entered and return of resolution requested April 18 (15:759). Resolution returned April 19 (15:762). Reconsidered and nomination confirmed April 20 (15:782).

Moses Veale, United States attorney for Territory of Montana. Rejected April 17, 1867 (15:750). Motion to reconsider entered and return of resolution requested April 18 (15:759). Resolution returned April 19 (15:762). Reconsidered and nomination confirmed April 20 (15:781).

Charles E. DeLong, Governor of Washington Territory. Rejected April 17, 1867 (15:750). Motion to reconsider entered and return of resolution requested April 19 (15:766). Reconsidered and matter postponed until regular session April 20 (15:782). [Marshall F. Moore was confirmed for the same office April 20 (15:780).]

M. L. Blair, postmaster at Hyde Park, Pa. Confirmed April 18, 1867 (15:757). Motion to reconsider entered April 19 (15:767). Resolution returned, "in compliance with the request of the Senate of the 19th instant," April 20 (15:775). Reconsidered and nomination rejected April 20 (15:783).

88 William Johnson, collector of internal revenue for fifth district of Wisconsin. Rejected April 19, 1867 (15:766). Resolution returned, "in compliance with the resolution of the Senate of the 20th instant," April 20 (15:776). Reconsidered and nomination confirmed April 20 (15:782).

Benjamin Le Fevre, consul at Nuremberg. Rejected April 19, 1867 (15:766). Motion to reconsider entered April 19 (15:767). Resolution returned, "in compliance with the request of the Senate of the 19th instant," April 20 (15:775). Reconsidered and nomination confirmed April 20 (15:782–783).

Henry A. Wise, Chief of Bureau of Ordnance. Confirmed July 15, 1867 (15:793–794). Motion to reconsider entered and return of resolution requested July 16 (15:819). Resolution returned July 17

(15:844; proceedings of July 19). Motion to reconsider failed July 19 (15:847).

Nelson H. Davis, inspector general in Army. Confirmed July 15, 1867 (15:794). Motion to reconsider entered and return of resolution requested July 16 (15:818–819). Resolution returned July 17 (15:844; proceedings of July 19). Reconsidered and nomination rejected, July 19 (15:847) and again July 20 (15:857).

Robert Morrow, paymaster, with rank of major. Reported adversely [and apparently rejected, although the record does not so indicate] July 19, 1867 (15:847). Motion to reconsider resolution of rejection entered and return of resolution requested July 20 (15:855). Resolution returned July 20 (15:853). [Renominated Dec. 3 (16:107; proceedings of Dec. 16).]

James King, postmaster at Greensburgh, Ind. Rejected July 19, 1867 (15:847). Motion to reconsider entered and return of resolution requested July 20 (15:855). Resolution returned July 20 (15:854). Reconsidered and nomination confirmed July 20 (15:858).

Isaac L. Gibbs, Governor of Idaho Territory. Confirmed July 19, 1867 (15:847). Motion to reconsider entered and return of resolution requested July 20 (15:855). Resolution returned July 20 (15:853). Reconsidered and nomination laid on table July 20 (15:857).

Jacob Carmany, assessor of internal revenue for tenth district of Pennsylvania. Rejected Dec. 9, 1867 (16:47). Motion to reconsider entered and return of resolution requested Dec. 11 (16:95). Resolution returned Dec. 12 (16:105). Motion to reconsider failed Dec. 13 (16:106).

J. Warren Bell; collector of customs for district of Brazos de Santiago. Rejected Dec. 11, 1867 (16:95). Motion to reconsider entered and return of resolution requested Dec. 13 (16:106). Resolution returned Dec. 14 (16:108; proceedings of Dec. 16). Motion to reconsider failed Dec. 16 (16:109–110).

89 Lemuel D. Evans, collector of internal revenue for fourth district of Texas. Rejected Jan. 9, 1868 (16:126). Motion to reconsider entered and return of resolution requested Jan. 11 (16:129). Resolution returned Jan. 13 (16:133; proceedings of Jan. 16). Reconsidered and recommitted Jan. 16 (16:136), and again Feb. 5 (16:162). Reported favorably March 12 (16:197). Confirmed March 24 (16:204–205).

Noah L. Jeffries, Register of the Treasury. Nominated Dec. 2, 1867 (16:3; proceedings of Dec. 4) by the following message:

"I nominate Noah L. Jeffries to be Register of the Treasury, he having been appointed during the recess of the Senate in place of S. B. Colby, deceased.

ANDREW JOHNSON."

Confirmed, 24–18, Feb. 12, 1868 (16:166–167). Motion to reconsider entered and return of resolution requested Feb. 14 (16:168). Resolution returned with an accompanying report from the Secretary of the Treasury (see below), Feb. 19 (16:178; proceedings of Feb. 24). Letter from Mr. Jeffries referred to Committee on the Judiciary Feb. 24 (16:184). The following is from the Journal for March 12, 1868 (16:195–197):

"Mr. Edmunds, from the Committee on the Judiciary, to whom was referred, the 24th February last, the subject of the appointment of

Noah L. Jeffries to be Register of the Treasury, submitted the following report; which was ordered to be printed in confidence for the use of the *lowing Senate:

"The Committee on the Judiciary, to whom was referred a message of the President of the United States, and a letter of the Secretary of the Treasury on the subject of the appointment of Noah L. Jeffries to be Register of the Treasury, respectfully report that the nomination of Mr. Jeffries was confirmed by resolution of the Senate on Wednesday, the 12th of February last. Pursuant to the rules of the Senate the resolution of confirmation was held until Friday, the 14th of February, when, at about the hour of 11 o'clock in the morning, it was transmitted to the President. Afterwards, on the same day, the 14th of February, a motion was made, pursuant to the rules of the Senate, to reconsider the resolution of confirmation, and an order was entered directing the Secretary to request the President to return the resolution of assent, which order was transmitted and delivered to the President on the same 14th of February, at about 5 o'clock in the afternoon, and is in the fol- form.

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
February 14, 1868.

Resolved, That the Secretary be directed to request the President of the United States to return to the Senate its resolution of the 12th instant, advising and consenting to the appointment of Noah L. Jeffries to be Register of the Treasury.

J. W. FORNEY,
Secretary.

90 "In response to this latter resolution the President, on the 19th of February, returned to the Senate the resolution of confirmation, with a message transmitting a copy of a report upon the subject from the Secretary of the Treasury, from which it appears that the resolution of the Senate recalling its resolution of confirmation so delivered to the President on the 14th, was not actually received by the Secretary of the Treasury until the 15th, Saturday, and that on the 15th, and before the Secretary of the Treasury received said resolution, Mr. Jeffries had taken the oaths required by law, and had received his commission as Register of the Treasury; and from the same communication it appears that the commission to Mr. Jeffries was actually made out at the State Department on the 14th; but whether before or after the President received the recalling resolution of the Senate does not appear; but it was not transmitted to and received by the Treasury Department until the 15th, being the day after the President had notice that the Senate had under consideration the reconsideration of the nomination, and had recalled its resolution advising and consenting to the appointment.

"The general course of business appears to be, in respect to appointments in the Treasury Department, to have the commissions signed at the Executive Mansion and entered up and recorded in the State Department and there sealed, as is required by law, and to then transmit the same to the Treasury Department for delivery to the officer upon his complying with the precedent requirements of law as to qualification, &c.

*This is evidently a misprint in the Journal, and should be inserted fifteen lines below.

"It thus appears that before Mr. Jeffries had been qualified or commissioned as required by law precedent to his entering upon the discharge of his functions under his permanent appointment the President of the United States, in whom the sole right of appointment, subject to the approval of the Senate, is vested by the Constitution, had received notice from the Senate that it had not finally acted upon the question of advising and consenting to the nomination, and withdrawing its resolution of assent to that appointment which had been transmitted to the President on the same day; and the committee are, therefore, of the opinion that the Senate may now lawfully reconsider its vote advising and consenting to the appointment if it shall see proper cause therefor. In this view of the case a majority of the committee were of opinion that it was inexpedient to enter upon an inquiry as to the matter of fact whether the issuing of the commission in this case and the qualification of the officer in question was hastened for any cause out of the usual course of business.

"The message of the President and the letter of the Secretary of the Treasury are hereto appended and returned.

91 *To the Senate of the United States:*

In compliance with the request of the Senate, of the 14th instant, I return herewith their resolution of the 12th of February, advising and consenting to the appointment of Noah L. Jeffries as Register of the Treasury, and transmit a copy of a report upon the subject from the Secretary of the Treasury.

ANDREW JOHNSON.

WASHINGTON, D. C., *February* 19, 1868.

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
February 14,1868.

Resolved, That the Secretary be directed to request the President of the United States to return to the Senate its resolution of the 12th instant, advising and consenting to the appointment of Noah L. Jeffries to be Register of the Treasury.

Attest: J. W. FORNEY,
Secretary.

TREASURY DEPARTMENT, *February* 17, 1868.

SIR: I received, on the 15th instant, the resolution of the Senate of the preceding day, requesting you to return to that body its resolution of the 12th instant, advising and consenting to the appointment of Noah L. Jeffries to be Register of the Treasury, and have to state, in reply, that in the ordinary transaction of business the commission was issued on the 14th instant by the State Department, and was received at this Department on the 15th instant.

General Jeffries had legally qualified and entered upon the discharge of the duties of his office prior to the receipt of the Senate resolution of the 14th instant, which, under these circumstances, is herewith returned.

I am, very respectfully,

H. MCCULLOCH,
Secretary of the Treasury.

THE PRESIDENT.

[Mr. Jeffries was during the same session nominated as Commissioner of Internal Revenue July 22 (16:340; proceedings of July 23), and rejected, 16–25, July 25 (16:370). March 31, 1869 (17:49), during a subsequent session, John Allison was nominated Register "in place of N. L. Jeffries, resigned."]

White House Record.—No record of this case was found.

Moses N. Wisewell, Commissioner of Internal Revenue. Rejected Feb. 28, 1868 (16:186). Motion to reconsider entered and return of resolution requested March 6 (16:190). Resolution returned March 7 (16:192; proceedings of March 9). Motion to reconsider failed April 14 (16:227).

92 Charles Van Winkel, marshal for district of Virginia. Confirmed March 12, 1868 (16:198). Motion to reconsider entered and return of resolution requested March 16 (16:199). Resolution returned March 18 (16:202; proceedings of March 20). Motion to reconsider withdrawn March 24 (16:204).

T. W. Scott, consul at Matamoras. Rejected March 12,1868 (16:198). Motion to reconsider entered and return of resolution requested March 16 (16:199). Resolution returned March 18 (16:203; proceedings of March 20). Motion to reconsider withdrawn April 20 (16:228).

Edgar H. Bates, justice of the peace for Washington County, D. C. Confirmed March 24, 1868 (16:204–205). Motion to reconsider entered and return of resolution requested March 26 (16:209). Resolution returned March 31 (16:224; proceedings of April 7). Reconsidered and again confirmed July 25 (16:372).

93 RULES OF MARCH 25, 1868

On March 25, 1868 (Senate Journal, pp. 340–347) the Senate adopted a complete set of rules, including the following:

20. When a question has been made and carried in the affirmative or negative, whether previously reconsidered or not, it shall be in order for any senator of the majority to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after the bill, resolution, message, report, amendment, or motion upon which the vote was taken shall have gone out of the possession of the Senate, announcing their decision, except a resolution confirming or rejecting a nomination by the President; nor shall any motion for reconsideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter; but a motion to reconsider a vote upon a nomination shall always, if the resolution announcing the decision of the Senate has been sent to the President, be accompanied by a motion requesting the President to return the same to the Senate. When any question may have been decided by the Senate, in which two-thirds of the senators present are necessary to carry the affirmative, any senator who votes on that side which prevailed in the question may be at liberty to move for a reconsideration; and a motion for reconsideration shall be decided by a majority of votes. But no motion to reconsider a vote upon a motion to reconsider shall be in order at any time.

37. "* * * Nominations neither approved nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made by the President; and if

the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned to the President, and shall not be afterwards acted upon, unless again submitted to the Senate by the President; and all motions pending to reconsider a vote upon a nomination shall fall on such adjournment or recess; and the Secretary of the Senate shall thereupon make out and furnish to the heads of departments and other officers the list of nominations rejected or not confirmed, as required by law. * * *"

43. "Nominations approved or definitely acted on by the Senate shall not be returned by the Secretary of the Senate to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate. The President of the United States, shall, from time to time, be furnished with an authenticated transcript of the executive records of the Senate, but no further extract from the executive journal shall be furnished, except by special order; and no paper, except original treaties, transmitted to the Senate by the President of the United States, or any executive officer, shall be returned or delivered from the office of the Secretary of the Senate without an order of the Senate for that purpose."

PRECEDENTS FROM MARCH 25, 1868, TO JANUARY 12, 1877

94 H. G. Worthington, minister resident to Argentine Republic. Confirmed; ordered that President be notified "forthwith" June 5, 1868 (16:251–252). Motion to reconsider entered and return of resolution requested June 6 (16:252). Resolution returned June 8 (16:254; proceedings of June 9). Motion to reconsider withdrawn June 9 (16:255).

R. H. Cochran, assessor of internal revenue for sixth district of Kentucky. Rejected July 17, 1868 (16:317). Resolution returned, "in compliance with the request of the Senate of the 18th instant" (see 16:656), July 24 (16:345). Motion to reconsider failed July 25 (16:372).

William Selden, collector of internal revenue for second district of Virginia. Confirmed (16:368), motion to reconsider entered and return of resolution requested (16:369), resolution returned (16:364); and motion to reconsider failed (16:372–373), all on July 25, 1868.

William B. Storm, consul at Leeds. Confirmed (16:368), motion to reconsider entered and return of resolution requested (16:369), resolution returned (16:364), reconsidered and nomination rejected (16:373), all on July 25, 1868.

Samuel T. Crown, justice of the peace for Washington County, D. C. Confirmed (16:368), motion to reconsider entered and return of resolution requested (16:373), all on July 25, 1868. Resolution returned July 27 (16:382). Reconsidered and confirmation rejected July 27 (16:385).

Lewis A. Scott, postmaster at Lowville, N. Y.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 7, 1870 (17:474). Motion to reconsider entered and return of resolution requested June 9 (17:479). Resolution returned June 13 (17:480; proceedings of June 17), with the following message:

To the Senate of the United States:

In answer to the resolution of the Senate dated 9th instant, the resolution of the 7th instant advising and consenting to the appointment of Lewis A. Scott to be deputy postmaster at Lowville, Lewis County, N. Y., is herewith returned.

EXECUTIVE MANSION, *June* 13, 1870.

U. S. GRANT.

Motion to reconsider withdrawn June 17 (17:482).

95 *White House Record.*—Volume beginning March 4, 1869, arranged according to States, at page 63.

Action of Senate,
June 7, 1870.
Date of commission,
June 7, 1870.
Remarks:
6/18. Confirmation returned—motion to reconsider withdrawn. Confirmation recalled by Senate Res. of 9" June.

Bird W. Gray, district judge for Eastern District of Texas.

Senate Executive Journal.—Confirmed March 10, 1871 (18:12-13). Motion to reconsider entered and return of resolution requested March 13 (18:14-15). [The Journal does not record whether or not the resolution was returned.] Reconsidered and nomination recommitted March 20 (18:27). Reported favorably April 12 (18:62). Consideration postponed indefinitely April 19 (18:78). Renominated May 15 (18:98; proceedings of May 22). Nomination laid on table, 30-23, May 25 (18:111).

White House Record.—Volume beginning March 4, 1869, arranged according to States, at page 203.

Nominated,
May 15, 1871.
Action of Senate,
(Blank).
Date of commission,
(Blank).
Remarks:
Sent in May 22d, 1871.
[Remarks entered in pencil.]

Thomas H. (or J.) Henderson, collector of internal revenue for fifth district of Illinois.

Senate Executive Journal.—Confirmed March 17, 1871 (18:24). Motion to reconsider entered and return of resolution requested March 20 (18:27). [The Journal does not record whether or not the resolution was returned.] Motion to reconsider failed and resolution of confirmation ordered transmitted to President March 24 (18:40).

96 *White House Record.*—Volume beginning March 4, 1869, arranged according to States, at page 244.

Action of Senate,
March 17, 1871.
Date of commission,
March 29," 1871.
Remarks:
(Blank).

Edwin Eells, Indian agent for Washington Territory.

Senate Executive Journal.—Confirmed March 17, 1871 (18:24). [The Journal does not record whether or not the President was notified at this time.] Motion to reconsider entered March 20 (18:27). Motion to reconsider failed and resolution of confirmation ordered transmitted to President April 19 (18:79).

White House Record.—Volume beginning March 4, 1869, arranged according to States, at page 373.

Action of Senate,
April 17, 1871.
Date of commission,
May 1, 1871.
Remarks:
(Blank).

Nicholas H. Owings, register of Arkansas Valley district land office, Colo.

Senate Executive Journal.—Confirmed March 17, 1871 (18:24). Motion to reconsider entered and return of resolution requested March 20 (18:27). Resolution returned March 24 (18:38). Nomination withdrawn March 31 (18:49).

White House Record.—Volume beginning March 4, 1869, arranged according to States, at page 379.

Action of Senate,
March 17, 1871.
Date of commission,
(Blank).
Remarks:
3/20. Senate recalled confirmation.
3/24. Conf. retd.
3/31. Nom. withdrawn.

97 Eli F. Jennings, assessor of internal revenue for third district of Alabama.

Senate Executive Journal.—Rejected March 23, 1871 (18:37). Motion to reconsider entered and return of resolution requested March 30 (18:48). Resolution returned April 6 (18:75; proceedings of April 18). Reconsidered and nomination laid on table April 19 (18:80).

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 182.

Action of Senate,
Rejected March 23d, 1871.
Date of commission,
(Blank).
Remarks:
(Blank).

Henry H. Humphreys, captain in Fifteenth Infantry.

Senate Executive Journal.—Confirmed Jan. 11, 1872 (18:167). Return of resolution requested Jan. 23 (18:178). [The journal does not record whether or not the resolution was returned.] Reconsidered and recommitted Feb. 1 (18:187). Renominated Jan. 23, 1873 (18:382; proceedings of Jan. 24), and confirmed Jan. 27 (18:385).

White House Record.—Volume beginning March 4, 1869, diplomatic, military, etc., at page 130.

Action of Senate,
January 11, 1872.
Date of commission,
Commission not signed & retd. to War Dept. cancelled Feb. 3d, 1872. [The entry under Date of commission appears in red ink.]
Remarks:
(Blank).

98 John W. Bean, first lieutenant in Fifteenth Infantry.

Senate Executive Journal.—Jan. 11, 1872 "The Senate proceeded to consider the nominations of the following-named officers for promotion in the Army of the United States, viz: * * * John W. Bean * * * and

"*Resolved*, That the Senate advise and consent to the appointment of the said persons, agreeably to their nominations, respectively" (18:167).

Jan. 23, "Mr. Cameron submitted the following resolution for consideration, viz:

"*Resolved*, That the President be requested to return to the Senate its resolution of the 11th of January advising and consenting to the appointment of * * * Second Lieut. John W. Bean to be first lieutenant in the Fifteenth Infantry.

"On motion by Mr. Cameron,

"The Senate proceeded, by unanimous consent, to consider the said resolution, and unanimously agreed thereto" (18:178). [The Journal does not record whether or not the resolution was returned.]

Feb. 1 "Mr. Cameron submitted a motion that the Senate reconsider its resolution of the 11th of January advising and consenting to the appointment of * * * Second Lieut. John W. Bean to be first lieutenant.

"On motion by Mr. Cameron,

"The Senate proceeded to consider the said motion, and unanimously agreed thereto.

"The question recurring, Will the Senate advise and consent to the appointment of the said persons?

"On motion by Mr. Cameron,

"*Ordered*, That the said nominations be recommitted to the Committee on Military Affairs" (18:187).

To the Senate of the United States:

I nominate the officer herein named for promotion in the Army of the United States:

Fifteenth Regiment of Infantry

Second Lieut. John W. Bean to be first lieutenant, December 13, 1871, vice Bradford, dismissed.

U. S. GRANT.

WASHINGTON, *June 5, 1872.*

"NOTE.—On January 11, 1872, Second Lieut. John W. Little, Fifteenth Infantry, was confirmed by the Senate to be first lieut. vice Bradford, dismissed—the restoration to the service of Capt. Henry A. Ellis, late Fifteenth Infantry (confirmed May 28, 1872),

cancels that promotion and the nomination of Lieutenant Bean is now submitted in order that the record may stand corrected and completed" (18:273).

June 10, "The Senate proceeded to consider the nominations of John W. Bean * * * and

"*Resolved*, That the Senate advise and consent to the appointment of the said persons, agreeably to their their nomihations, respectively" (18:281).

99 *White House Record.*—Volume beginning with March 4, 1869, diplomatic, military, etc., at page 25:

Action of Senate,
January 11, 1872.
Date of commission,
January 17, 1872.
Remarks:
(Blank).

James F. Legate, Governor of Washington Territory.

Senate Executive Journal.—Confirmed Jan. 26, 1872 (18:182). Motion to reconsider entered and return of resolution requested Feb. 1 (18:187). [The Journal does not record whether or not the resolution was returned.] Motion to reconsider debated Feb. 6 (18:192) and Feb. 7 (18:193). April 9 the President sent the following message to the Senate regarding Legate (18:229):

To the Senate of the United States:

I hereby withdraw, at his own request, the nomination of James F. Legate, sent to the Senate January 10, 1872, to be Governor of the Territory of Washington.

U. S. GRANT.

EXECUTIVE MANSION, *April 9, 1872.*

White House Record.—Volume beginning with March 4, 1869, arranged by States, at page 373:

Action of Senate,
January 26, 1872.
Date of commission,
January 26, 1872.
Remarks:
[In pencil:] Confirmation recalled by Senate & returned Feb. 3, 1872 [in red ink:] & nomination withdrawn Apr. 9, 1872.

[The above record of the White House indicates that a commission was issued to James F. Legate by the President on Jan. 26, 1872. See Appendix "A," infra p. 110.]

100 *Department of State Record.*—In the card record files there is a card reading—

"Legate, James F., Kans. Governor of Washington Territory, Misc. 3, p. 66, Jan. 26, 1872, conf. Appointment Cancelled."

[The words "Appointment Cancelled" are typed in red.]

In a record of the department labeled "Miscellaneous commissions permanent and temporary, Jan. 16, 1871 to March 13, 1885," Volume III, at page 66, there appears a copy of a commission made out to James F. Legate of Kansas to be Governor of Washington Territory. In this copy it is stated:

". . . Given under my hand, at the city of Washington, the twenty sixth day of January in the year of our Lord one thousand eight hundred and seventy-two and the Independence of the United States of America the ninety-sixth.

U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State."

[On the upper left-hand corner of this copy appears in black ink the notation "Cancelled."]

James J. Kane, advancement in grade of Navy chaplain.

Senate Executive Journal.—Confirmed March 14, 1872 (18:215). Motion to reconsider entered and return of resolution requested March 18 (18:217). Resolution returned, reconsidered and recommitted March 20 (18:220). Reported favorably and again confirmed March 21 (18:221). Reconsidered and recommitted March 25 (18:222–223). Reported adversely and rejected April 12 (18:230–231).

White House Record.—Volume beginning March 4, 1869, for diplomatic, military, etc., at page 180.

Action of Senate,
March 14, 1872.
Date of commission [in red].
Confirmation recalled by Senate and Rejected under date of April 12th 1872.

101 George Nourse, register of Linkville Land Office, Oreg.

Senate Executive Journal.—Nominated May 31, 1872 (18:270; proceedings of June 1), by the following message:

To the Senate of the United States:

I nominate George Nourse, of Oregon, to be register of the land office at Linkville, Oreg., vice E. B. Watson, declined.

U. S. GRANT.

WASHINGTON, D. C., *May* 31, 1872.

(18:270; proceedings of June 1.)

Confirmed June 5, 1872 (18:274). Motion to reconsider entered and return of resolution requested June 7 (18:277). [The Journal does not record whether or not the resolution was returned.] Reconsidered and nomination placed on calendar June 10 (18:281).

During the next session, on Dec. 5, 1872, the President sent the following letter of nomination (18:312; proceedings of Dec. 6):

To the Senate of the United States:

I nominate George Nourse of Oregon who was commissioned during the recess of the Senate to be register of the land office at Linkville, Oreg.

U. S. GRANT.

WASHINGTON, D. C., *December* 5, 1872.

The Senate confirmed this nomination Dec. 11 (18:334–335).

White House Record.—Volume beginning with March 4, 1869, arranged by States, at page 350:

Action of Senate,
June 5, 1872.
Date of commission,
June 8, 1872.
Remarks [in pencil]:
Withdrawn by Senate June 10. Com. not issued.

102 Alexander Montgomery and Tredwell Moore, deputy quartermasters general with rank of lieutenant colonel.

Senate Executive Journal.—Confirmed June 6, 1872 (18:276; see p. 273). Motion to reconsider entered and return of resolution requested June 8 (18:278). Resolution returned Dec. 6 (18:330; proceedings of Dec. 9). President's message referred to Committee on Military Affairs Dec. 11 (18:334). Extract from Journal for Dec. 19 (18:352):

"Mr. West, from the Committee on Military Affairs, to whom was referred, the 11th instant, the message of the President of the 9th instant returning, in compliance with the resolution of the Senate of the 8th of June last, the resolution of the Senate of the 6th of June last advising and consenting to the appointment of Alexander Montgomery and Tredwell Moore, reported the same back with a recommendation that the Senate reconsider its resolution advising and consenting to the appointment of the said persons.

"On the question to agree to the report of the committee,

"Mr. Stevenson raised the following question of order, viz:

"That the thirty-seventh rule of the Senate provides that if the Senate shall adjourn or take a recess for more than thirty days all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned to the President and shall not be afterwards acted upon, unless again submitted to the Senate by the President; and all motions pending to reconsider a vote upon a nomination shall fall on such adjournment or recess, and that in accordance with this rule the motion to reconsider fell at the close of last session and can not, either under this message or as an original motion, be in order at this time.

"The Chair sustained the point of order, and ruled the motion of reconsideration out of order.

"Mr. Edmunds moved that the resolution by which the nominations of Alexander Montgomery and Tredwell Moore were confirmed be reconsidered.

"The Chair ruled the motion out of order for the reason that the act of appointing and confirming an officer, like that of concluding a treaty, was one in which both Executive and senatorial action are involved—the Executive having in both cases initiative. When such an act is completed, whether a confirmation or treaty, the Senate can not initiate a repeal. Action tending to a reversal must originate with the President.

"Mr. Edmunds appealed from the decision of the Chair, and,

"After debate, withdrew the appeal.

"On motion by Mr. Conkling,

"*Ordered*, That an extract from the Journal in relation to this matter be transmitted to the President of the United States."

103 *White House Record.*—Volume beginning March 4, 1869, for diplomatic, military, etc., at page 220.

Action of Senate,
June 6, 1872.
Date of commission,
July 2, 1872.
Remarks [in case of Montgomery]:
(Blank.)
Remarks [in case of Moore, entered in pencil]:
Gen. Dent has commission.

Samuel Bard, deputy postmaster at Chattanooga, Tenn.

Senate Executive Journal.—Confirmed Dec. 12, 1872 (18:335). Motion to reconsider entered and return of resolution requested Dec. 19 (18:351–352). [The Journal does not record whether or not the resolution was returned.] Resolution reconsidered Jan. 8, 1873 (18:363). Nomination withdrawn Jan. 9 (18:364; proceedings of Jan. 13) by means of the following message sent by the President to the Senate:

To the Senate of the United States:

I hereby withdraw, at his own request, the nomination of Samuel Bard to be deputy postmaster at Chattanooga, Tenn., sent to the Senate December 12, 1872.

U. S. GRANT.

EXECUTIVE MANSION, *January* 9, 1873.

White House Record.—Volume beginning with March 4, 1869, arranged by States, at page 268:

Action of Senate,
December 12, 1872.
Date of commission,
(Blank.)
Remarks:
12/19. Senate recalls confirmation.
1/7.73. Confirmation retd.
1/9. Withdrawn at his own request.

[The above record does not indicate that a commission was ever issued to Bard by the President. See Appendix "A," infra, p. 110.]

104 *Record of Post Office Department.*—Volume 28 of Register of Appointments of Postmasters in the Post Office Department (Kentucky, Tennessee, and Louisiana, 1858–1875) at p. 58 of the entries for Tennessee contains the following, under Chattanooga:

Samuel Bard (P. & S.) 12 Dec. 72.

[The Postmaster General states that it is impossible to tell from this record whether a commission was or was not made out or issued to Bard. See Appendix "B," infra, p. 111.]

E. B. Rawson, marshal for Southern District of Florida.

Senate Executive Journal.—Confirmed Dec. 12, 1872 (18:336). Motion to reconsider entered and return of resolution requested Dec. 19 (18:352). [Benjamin H. Kerr nominated Dec. 20 (18:357; proceedings of Jan. 6, 1873) "in place of E. B. Rawson, who declined the appointment."]

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 177.

Action of Senate,
Dec. 12 72.
Date of commission,
(Blank.)
Remarks:
12/20. Recall of confirmation.
1/6.73. Confirmation retd.

Alva A. Knight, United States attorney for Northern District of Florida.

Senate Executive Journal.—Confirmed Jan. 21, 1873 (18:378–379). Motion to reconsider entered and return of resolution requested Jan. 27 (18:386). Resolution returned Jan. 31 (18:389; proceedings of Feb. 3), with the following message from the President to the Senate:

To the Senate of the United States:

In reply to the resolution of the Senate of the 27th instant I return herewith its resolution of the 21st instant, advising and consenting to the appointment of Alva A. Knight to be attorney of the Northern District of Florida.

U. S. GRANT.

JANUARY 31, 1873.

Motion to reconsider withdrawn and resolution ordered sent back to President Feb. 6 (18:392–393).

105 *White House Record.*—Volume beginning with March 4, 1869, arranged by States, at page 177:

Action of Senate,
Jan. 21, 1873.
Date of commission,
Jan. 21, 1873.
Remarks:
1/27. Res. of confirmation recalled.
1/31. Res. retd. to Senate
2/7. Res. of confmn. recd. back from Senate.

Records of Department of State.—Record of Attorneys, Vol. IV, at page 48 contains copy of a commission made out to Knight under date of Jan. 21, 1873.

106 Mrs. Belle C. Shumard, deputy postmaster at Fort Smith, Ark.

Senate Executive Journal.—Nominated January 29, 1873 (18:387), by the following message:

To the Senate of the United States:

I nominate Mrs. Belle C. Shumard to be deputy postmaster at Fort Smith, in the county of Sebastian and State of Arkansas, in place of Thomas C. Scott.

U. S. GRANT.

WASHINGTON, D. C., *January* 29, 1873.

Confirmed Feb. 6, 1873 (18:393). Motion to reconsider entered and return of resolution requested Feb. 25 (18:404–405). The resolution was returned to the Senate with the following message from the President (18:410):

To the Senate of the United States:

In answer to the resolution of the Senate of the 25th February, 1873, I return herewith its resolution of the 6th of February, 1873, advising and consenting, among others, to the appointment of Mrs. Belle C. Shumard to be deputy postmaster at Fort Smith, Ark.

U. S. GRANT.

EXECUTIVE MANSION, *March* 1, 1873.

After the resolution was returned, the Senate reconsidered it and recommitted the nomination March 1 (18:410).

In the proceedings of December 13, 1873 (19:184) there appears the following letter of nomination:

To the Senate of the United States:

I nominate Valentine Dell to be deputy postmaster at Fort Smith, in the county of Sebastian and State of Arkansas, in place of Thomas G. Scott, removed.

U. S. GRANT.

WASHINGTON, D. C., *December* 15, 1873.

White House Record.—Volume beginning with March 4, 1869, arranged by States, at page 325:

Action of Senate,
Feby. 6, 1873.
Date of commission,
Feby. 6, 1873.
Remarks:
Res. of con. recalled 2/25. Ref. to P. M. G. 2/26.

107 William W. Mitchell, associate justice of Supreme Court of Utah Territory.

Senate Executive Journal.—Confirmed Feb. 14, 1873 (18:398). Motion to reconsider entered and return of resolution requested Feb. 19 (18:400). [The Journal does not record whether or not the resolution was returned.] Reconsidered and nomination recommitted Feb. 25 (18:404). [Philip H. Emerson nominated to same office March 7 (19:9).]

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 383.

Action of Senate,
Feby. 14, '73.
Date of commission,
(Blank.)
Remarks:
Res. of con. retd. to Senate Feb. 22, '73, in reply to request of Feb. 19.

John M. Dunn, marshal for district of Delaware.

Senate Executive Journal.—Confirmed March 10, 1873 (19:626, 634). Reconsidered and recommitted March 11 (19:36). Reported without recommendation and rejected March 21 (19:95). Motion to reconsider entered and return of resolution requested March 22 (19:102). Resolution returned March 24 (19:103). Reconsidered, and nomination recommitted and reported favorably, March 24 (19:104, 105). Confirmed, 31–14, March 26 (19:116).

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 111.

Action of Senate,
Confirmed Mch. 26, '73.
Rejected Mch. 21, '73.
Date of commission,
March 26, 1873.
Remarks:
3/24. Rejection retd. to Senate in answer to Res. of Mch. 22d–73.

108 Peter C. Shannon, Chief Justice of Supreme Court of Dakota Territory.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 17, 1873 (19:73, 75). Motion to reconsider entered and return of resolution requested March 18 (19:79). Resolution returned March 21 (19:94) with the following message from the President to the Senate:

To the Senate of the United States:

In answer to the resolution of the Senate of the 18th instant I return herewith its resolution of the 17th instant advising and consenting, among others, to the appointment of Peter C. Shannon to be chief justice of the supreme court of Dakota Territory.

U. S. GRANT.

EXECUTIVE MANSION, *March* 21, 1873.

Reconsidered and nomination again confirmed March 21 (19:96).

White House Record.—Volume beginning with March 4, 1869, arranged by States, at page 361:

Action of Senate,
March 17, 73.
Date of commission,
21 date of new com.
March ∧ 17, 73.
Remarks:
3/20. Res. of 3/18. recalling confirmation. refd. to A. G.
3/21. Res. retd. to Senate. 3/21. Com. held up.
3/21. Reconfirmed.

L. A. Burnett, deputy postmaster at Terre Haute, Ind.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 18, 1873 (19:81, 82). Motion to reconsider entered and return of resolution requested March 19 (19:87). Resolution returned March 20 (19:94; proceedings of March 21). Reconsidered and nomination laid on table March 22 (19:103).

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 229.

Action of Senate,
March 18, 73.
Date of commission,
(Blank.)
Remarks:
3/20. Res. of confirmation retd. under res. of 19th Mch.

109 E. Raymond Bliss, deputy postmaster at Columbus, Miss.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 18, 1873 (19:81–82). Motion to reconsider entered and return of resolution requested March 20 (19:90). Resolution returned March 22 (19:100), with the following message from the President to the Senate:

To the Senate of the United States:

In answer to the resolution of the Senate of the 20th instant, I herewith return its resolution of the 18th instant, advising and consenting, among others, to the appointment of E. Raymond Bliss to be deputy postmaster at Columbus, Lowndes County, Miss.

U. S. GRANT.

EXECUTIVE MANSION, *March* 22, 1873.

Motion to reconsider failed March 22 (19:102).

White House Record.—Volume beginning with March 4, 1869, arranged by States, at page 191:

Action of Senate,
March 18, 73.
Date of commission,
March 18, 73.
Remarks:
3/20. Senate recalls Res. of 18th. 3/21. P. M. G.
3/22. Confirmation retd. to the Senate.
3/24. Confirma-
received back from the Senate.

B. A. Boseman, deputy postmaster at Charleston Court House, S. C.

Senate Executive Journal.—Confirmed March 18, 1873 (19:81). Thereafter "on motion of Mr. Carpenter it was 'Ordered, That the rule be suspended, and the confirmation of this day be transmitted forthwith to the President of the United States.' (19:82). [The Senate held executive sessions on March 19 and March 20.] On March 21 the President sent a letter to the Senate withdrawing the nomination (19:94):

To the Senate of the United States:

I hereby withdraw the nomination, sent to the Senate on the 15th instant, of B. A. Boseman, to be a deputy postmaster at Charleston Court House, S. C.

U. S. GRANT.

EXECUTIVE MANSION, *March* 21, 1873.

110 On the same day the Senate unanimously;

"*Resolved*, That the nomination of B. A. Boseman of Charleston, S. C., having been confirmed and finally disposed of by the Senate and so certified to the President, can not be withdrawn, the same having gone out of the possession of the Senate" (19:96).

White House Record.—Volume beginning with March 4, 1869, arranged by States, at page 158:

Action of Senate,
March 18, 73.
Date of commission,
March 18, 73.
Remarks:
Withdrawn Mch. 21, 73.
3/21. Senate resolves that having been confirmed & certified to the Presdt. cannot be withdrawn.
3/24. Res. referred to P. M. Gen.

Ceburn L. Harris, collector of internal revenue for fourth district of North Carolina.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 20, 1873 (19:90, 91). Nomination withdrawn March 21 (19:94). Motion to reconsider entered and return of resolution requested March 21 (19:96). Resolution returned and reconsidered and nomination laid on table March 24 (19:104).

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 148.

Action of Senate,
March 20, 73.
Date of commission,
(Blank.)
Remarks:
Withdrawn 3/21, 73. 3/21. Senate recalls confirmation.
3/24. Recall refd. to Treasy.
3/24. Res. of 20th Mch. ret'd to Senate.

William R. Sapp, collector of internal revenue for thirteenth district of Ohio.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 20, 1873 (19:90, 91). Motion to reconsider entered and return of resolution requested March 21 (19:96). Resolution returned and reconsidered and nomination recommitted March 24 (19:104). Nomination withdrawn March 25 (19:111). Renominated Dec. 1 (19:137; proceedings of Dec. 3), and confirmed Dec. 18 (19:195).

111 *White House Record.*—Volume beginning March 4, 1869, arranged according to States at page 214.

Action of Senate,
March 20, 73.
Date of commission,
(Blank.)
Remarks:
3/21. Senate recalls confirmation-
3/24. Treasy. 3/24. Res. of 20th inst. retd. to Senate.
3/25-Nomination of Sapp withdrawn.

John W. Clark, deputy postmaster at Montpelier, Vt.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 20, 1873 (19:90, 91). "Reconsidered and recalled March 21, 1873" (19:604, 751). Resolution returned March 25 (19:114; proceedings of March 26), with the following message from the President to the Senate:

To the Senate of the United States:

In answer to the resolution of the Senate of the 21st instant, I return herewith its resolution of the 20th instant, advising and consenting, among others, to the appointment of John W. Clark to be deputy postmaster at Montpelier, Vt.

U. S. GRANT.

EXECUTIVE MANSION, *March* 25, 1873.

[No subsequent proceedings recorded in the Journal.]

White House Record.—Volume beginning with March 4, 1869, arranged by States, at page 20:

Action of Senate,
March 20, 73.
Date of commission.
March 20, 73.
Remarks:
3/21. Senate recalls confirmation. 3/24. P. M. Gen.
3/25. Res. of 20th Mch. retd. 3/26. confirmation recd. back.

112 James Newby, deputy postmaster at Cambridge City, Ind.

Senate Executive Journal.—Confirmed March 24, 1873 (19:106). Motion to reconsider entered and return of resolution requested March 25 (19:112). Resolution returned March 26 (19:114). Reconsidered and nomination laid on table March 26 (19:117).

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 229.

Action of Senate,
March 24, 73.
Date of commission,
(Blank.)
Remarks:
3/25. Senate recalls Res. of 24.
3/26. retd. to Senate.

Cyrus N. Baird, postmaster at Lincoln, Neb.

Senate Executive Journal.—Confirmed June 22, 1874 (19:365). Motion to reconsider entered and return of resolution requested June 23 (19:369). Resolution returned and reconsidered and nomination placed on calendar June 23 (19:370–371). Renominated Dec. 8 (19:380; proceedings of Dec. 10).

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 339.

Action of Senate,
(Blank.)
Date of commission,
(Blank.)
Remarks:
(Blank.)

Robert W. Lampton, postmaster at Ashland, Ky.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Dec. 15, 1874 (19:431, 432). Motion to reconsider entered and return of resolution requested Dec. 18 (19:441). Resolution returned and reconsidered and nomination recommitted Dec. 21 (19:447, 448). [No subsequent proceedings recorded in the Journal.]

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 257.

Action of Senate,
December 15, 74.
Date of commission,
(Blank.)
Remarks:
(Blank.)

[A second entry on same page gives March 11, 75 under Action of Senate and Date of Commission.]

113 J. C. S. Colby, consul at Chin Kiang.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Dec. 17, 1874 (19:439). Motion to reconsider entered and return of resolution requested Dec. 21 (19:448–449). The President replied Jan. 5, 1875 (19:460; proceedings of Jan. 7);

"In answer to the resolution of the Senate, of the 21st December last, requesting the return of its resolution of the 17th of the same

month, advising and consenting to the appointment of J. C. S. Colby to be consul of the United States at Chin Kiang, I have the honor to state that Mr. Colby's commission was signed on the 17th day of December, and upon inquiry at the Department of State it was found that it had been forwarded to him by mail before the receipt of the resolution of recall.

"U. S. GRANT."

White House Record.—Volume beginning with March 4, 1869, for diplomatic, military, etc., at page 45:

Action of Senate,
December 17, 1874.
Date of commission,
Dec. 17, 1874.
Remarks:
Res. of 12/24, 74 recalling confirmation.
See Message Bk. 1/5, 75.

William G. Ritch, secretary of Territory of New Mexico.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 2, 1876 (20:253–254). Motion to reconsider entered and return of resolution requested June 3 (20:254; proceedings of June 7). Resolution returned June 6 (20:254; proceedings of June 7). Nomination again confirmed, 33–7, June 28 (20:278).

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 397:

Action of Senate,
June 28, 1876.
June 2, 1876.
Date of commission,
July 1, 1876.
Remarks:
6/3 Senate recalled confirmation.
6/5 Res. of confirmation retd. to Senate. Dup. Con. recd. June 28, 76.

114 John Tyler, postmaster at Jacksonville, Fla.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 8, 1876 (20:256). Resolution reconsidered and nomination recommitted June 20 (20:259). Nomination reported adversely and rejected June 29 (20:271–272).

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 179.

Action of Senate,
(Blank.)
Date of commission,
(Blank.)
Remarks:
Rejected June 29, 1876.

John G. Clark, surveyor general of Dakota.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 12, 1877 (20:360, 361). Motion to reconsider entered and return of resolution requested Jan. 15 (20:362). Resolution returned Jan. 18 (20:365). Resolution reconsidered and nomination recommitted Jan. 22 (20:370). Nomination withdrawn Jan. 26 (20:372).

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 363.

Action of Senate,
Jan. 12, 1877.
Date of commission,
(Blank.)
Remarks:
1/18. Confirmation retd. to Senate as pr request of Jany 15, 77.
Nom. withdrawn Jan. 26th, 1877.

115 RULES OF JANUARY 17, 1877

The Senate again adopted a new set of rules January 17, 1877 (Senate Journal, pp. 117–128), including the following:

20. When a question has once been decided by a vote of the Senate, whether that vote be determined by a majority or by two thirds of the Senate, any Senator voting on that side which prevailed may enter a motion or move for a reconsideration thereof, at any time on the same day on which the vote was taken, or on either of the next two days of actual session thereafter; and all motions to reconsider shall be decided by a majority of the Senate.

When a bill, resolution, report, amendment, order, or message, upon which a vote has been taken, shall have gone out of the possession of the Senate and been communicated to the House of Representatives, the motion to reconsider such vote shall be accompanied by a motion to request the House to return the same to the Senate; which last motion shall be acted upon immediately, and determined without debate, and, when determined in the negative, shall be held to be a final disposition of the motion to reconsider.

21. If the Senate shall refuse to reconsider a vote, or if, upon the reconsideration of a vote, it shall reaffirm its first decision of the question, no further motion to reconsider shall be in order, unless by unanimous consent. And every motion to reconsider a vote taken upon any amendment or other question connected with a subject under consideration shall be decided at once, and a motion to reconsider may be laid on the table without affecting the question in reference to which the same may be made, and, if carried, shall be held to be a final disposition of such motion.

72. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered by the Senate, be referred to appropriate committees, and the final question on every nomination shall be, 'Will the Senate advise and consent to this nomination?' which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by the unanimous consent of the Senate.

73. All information communicated or remarks made by a Senator when acting upon nominations, concerning the character or qualifications of the person nominated, also all votes upon any nomination, shall be kept secret. If, however, charges shall be made against a person nominated, the committee may, in its discretion, notify such nominee thereof, but the name of the person making such charges shall not be disclosed. The fact that a nomination has been made, or that it has been confirmed or rejected, shall not be regarded as a secret.

116 74. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion.

75. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate.

76. When the Senate shall adjourn or take a recess for more than thirty days, all motions to reconsider a vote upon a nomination which has been confirmed or rejected by the Senate, which shall be pending at the time of taking such adjournment or recess, shall fall; and the Secretary shall return all such nominations to the President as confirmed or rejected by the Senate, as the case may be.

77. Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President.

78. The President of the United States shall, from time to time, be furnished with an authenticated transcript of the executive records of the Senate, but no further extract from the Executive Journal shall be furnished, except by special order of the Senate; and no paper, except original treaties transmitted to the Senate by the President of the United States, and finally acted upon by the Senate, shall be delivered from the office of the Secretary without an order of the Senate for that purpose.

PRECEDENTS FROM JANUARY 17, 1877, TO JANUARY 11, 1884

117 Charles H. Phelps, marshal for Wyoming.

Senate Executive Journal.—Confirmed Feb. 9, 1877 (20:387). Motion to reconsider entered and return of resolution requested Feb. 16 (20:392). [The Journal does not record whether or not the resolution was returned.] Resolution reconsidered and nomination recommitted Feb. 27 (20:404). [No subsequent proceedings recorded in the Journal; Gustave Schnitger was nominated to the same position April 15, 1878 (21:293).]

White House Record.—Volume beginning March 4, 1869, arranged according to States at page 378.

Action of Senate,
Feby. 9, 1877.
Date of commission [in pencil].
Give Com. to Mr. Sniffen.
Remarks:
(Blank.)

David Porter, surveyor of customs at Savannah, Ga.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 16, 1877 (21:28, 29). Motion to reconsider entered and return of resolution requested March 17 (21:30). Resolution returned March 17 (21:31). Renominated (at next session) Oct. 16 (21:50; proceedings of Oct. 17) and again Dec. 14 (21:178). Confirmed March 25, 1878 (21:274).

White House Record.—Volume beginning March 4, 1877, arranged according to States at page 93.

Action of Senate,
Mch. 16, 1877.
Date of commission,
(Blank.)
Remarks:
Confirmation recalled 3/17. See Mess. Bk.

Herman H. Newell, postmaster at South Evanston, Ill.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 4, 1878 (21:254). Motion to reconsider entered and return of resolution requested March 5 (21:256). Resolution returned March 7 (21:260; proceedings of March 12). Motion to reconsider withdrawn April 8 (21:287).

118 *White House Record.*—Volume beginning March 4, 1877, arranged according to States at page 139.

Action of Senate,
Mch. 4, 78.
ate of commission,
May 4, 78.
Remarks:
Res. of Con. recalled by Sen. See Mess Bk, p. 67. See note, p. 270. [At page 270 there is a note reading as follows:
New Res. of confirmation—dated March 4, 78—recd. Apl. 10—& forwd. to P. M. G.]

Lewis E. Parsons, United States attorney for Northern and Middle Districts of Alabama.

Senate Executive Journal.—Rejected, 17–22, March 25, 1878 (21:273). Motion to reconsider entered and return of resolution requested March 28 (21:279). Resolution returned April 1 (21:281). Motion to reconsider withdrawn April 2 (21:285).

White House Record.—Volume beginning March 4, 1877, arranged according to States at page 102.

Action of Senate and columns following:
Rejected Mch. 25, 1878. See Res. requesting ret. of rejection. See also p. 270. [Note at page 270 is as follows: No vote taken on motion to reconsider. Parsons therefore stands rejected as of date of original rejection, which was retd. to the President Apl. 5 & forwd. to the Atty. Genl.]

119 Robert M. Reynolds, first auditor of the Treasury.

Senate Executive Journal.—Rejected, 23–26, and motion to reconsider entered March 28, 1878 (21:279). Resolution returned "in compliance with a resolution of the Senate of the 28th ultimo" April 1 (21:281). Motion to reconsider withdrawn April 1 (21:282). New motion to reconsider entered April 2 (21:283). Resolution reconsidered and nomination confirmed April 16 (21:296–297).

White House Record.—Volume beginning March 4, 1877, diplomatic, military, etc., at page 145.
Action of Senate,
April 16, 78.
Date of commission,
Apl. 16, 78.
Remarks:
Rejected Mch. 28, 1878. See Res. requesting return of Res. of Rejection.

George F. Cutter, Chief of Bureau of Provisions and Clothing and Paymaster General of Navy.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" April 16, 1878 (21:296, 297). Confirmation reconsidered and return of notification requested April 17 (21:298). Resolution returned April 17 (21:299; proceedings of April 18). Nomination recommitted April 18 (21:299). Committee authorized to sit during sessions of Senate, and to print testimony, April 22 (21:301). Nomination reported favorably May 8 (21:311). Confirmed again May 15 (21:319).

White House Record.—Volume beginning March 4, 1877, diplomatic, military, etc., at page 20.
Action of Senate,
Apl. 16, 78.
May 15, 78.
Date of commission,
May 15, 78.
Remarks:
Res. of con. recalled by Sen. 4/17.

120 Morris Marks, collector of internal revenue for district of Louisiana.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 6, 1878 (21:342). Motion to reconsider entered and return of resolution requested June 11 (21:348). The President replied June 14 (21:353): "In reply I would respectfully inform the Senate that upon the receipt of the notice of confirmation the commission of Mr. Marks was signed and delivered to him, on the 8th instant." [The Journal (21:353) records the fact that this message was read, but contains no subsequent reference to the case.]

White House Record.—Volume beginning with March 4, 1877, arranged according to States, at page 110:
Action of Senate,
June 6, 1878.
Date of commission,
June 8, 1878.
Remarks:
(Blank.)

William K. Peabody, consul at Rio Grande, Brazil.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 14, 1878 (21:354, 355). Confirmation reconsidered and return of resolution requested June 15 (12:359–360). Resolution returned June 17 (21:364). Nomination recommitted June 18 (21:366–367). [John L. Frisbie was nominated to the same position Dec. 3 (21:378).]

White House Record.—Volume beginning March 4, 1877, diplomatic, military, etc., at page 133:

Action of Senate,
June 14, 1878.
Date of commission,
(Blank.)
Remarks [in pencil]:
Recalled June 15, 78.

C. W. Fisher, Postmaster at Bucyrus, Ohio.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 14, 1878 (21:354–355). Confirmation reconsidered and return of resolution requested June 15 (21:360). Resolution returned June 17 (21:364). Renominated Jan. 9, 1879 (21:448). Confirmed Jan. 14 (21:454).

White House Record.—Volume beginning March 4, 1877, arranged according to States at page 121:

Action of Senate,
June 14, 78.
Date of commission,
(Blank.)
Remarks:
Recalled by Sen. June 15, 78.

121 Benjamin C. Ludlow, collector of internal revenue for third district of Texas.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 14, 1878 (21:354–355). Motion to reconsider entered and return of resolution requested June 15 (21:360). Resolution returned June 17 (21:364). Motion to reconsider rejected June 19 (21:370).

White House Record.—Volume beginning March 4, 1877, arranged according to States at page 114:

Action of Senate,
June 14, 78.
Date of commission,
June 22, 78.
Remarks:
(Blank.)

John Howe (or How), Indian agent at Western Shoshone Agency, Nev.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 14, 1878 (21:354–355). Motion to reconsider entered and return of resolution requested June 15 (21:360–361). Resolution returned and reconsidered June 17 (21:364). Confirmed again June 19 (21:369).

White House Record.—Volume beginning March 4, 1877, arranged according to States at page 218:

Action of Senate,
June 14, 78.
Date of commission,
June 21, 78.
Remarks:
Dup. con. dated June 19 [entered in pencil; the last figure has been erased and rewritten; it is now clearly 9, but may have been originally either 4 or 9].

Reuben E. Fenton, commissioner at international monetary conference.

Senate Executive Journal.—Rejected; ordered that President be notified "forthwith" June 19, 1878 (21:370). Motion to reconsider made, return of resolution requested, resolution returned and reconsidered, nomination again rejected, 23–25, renominated, confirmed, 26–22, motion to reconsider laid on table 22–21, all June 19 (21:371–374).

White House Record.—Volume beginning March 4, 1877, diplomatic, military, etc., at page 43:

Action of Senate,
June 19, 1878.
Date of commission,
June 19, 1878.
Remarks:
(Blank.)

122 Green C. Chandler, United States attorney for northern district of Mississippi.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Dec. 12, 1878 (21:416). Motion to reconsider entered and return of resolution requested Dec. 16 (21:423). Resolution returned Dec. 19 (21:439), with the following message from the President to the Senate:

To the Senate of the United States:

In compliance with a resolution of the Senate of the 16th instant, I return herewith its resolution of the 12th December, 1878, advising and consenting to the appointment of Green C. Chandler to be attorney for the United States for the northern district of Mississippi.

R. B. HAYES.

EXECUTIVE MANSION, *December* 19, 1878.

Motion to reconsider withdrawn Jan. 29, 1879 (21:495).

White House Record.—Volume beginning with March 4, 1877, arranged by States, at page 106. There are two entries for Green C. Chandler. Under the first entry there appears the following:

Action of Senate,
Dec. 12, 1878.
Date of commission.
(Blank.)
Remarks:
Res. of con. retd. to Sen. 12/19 see Mess Bk. 121.

Under the second entry the following appears:

Action of Senate,
Dec. 12, 78.
Date of commission,
Dec. 12, 78.
Remarks:
Dup. res. of con. dated 12/12, 78 recd. 1/30, 79.

123 William H. Tubbs, postmaster at New London, Conn.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Dec. 20, 1878 (21:442). Motion to reconsider entered and return of resolution requested Jan. 7, 1879 (21:445). Resolution returned Jan. 9 (21:449), with the following message from the President to the Senate:

To the Senate of the United States:

In compliance with a resolution of the Senate of 7th instant, I return herewith its resolution of December 20, 1878, advising and consenting to the appointment of William H. Tubbs to be postmaster at New London, New London County, Conn.

R. B. HAYES.

EXECUTIVE MANSION, *January* 9, 1879.

Reconsidered and nomination recommitted Jan. 10 (21:451).

Reported favorably and again confirmed Jan. 14 (21:454–455).

White House Record.—Volume beginning with March 4, 1877, arranged by States, at page 28. There are two entries on the page for Tubbs. Under the first entry there appears:

Action of Senate,
Dec. 20, 1878 (the 20 appears to have been originally 17).
Date of commission,
Dec. 20, 1878 (entered in pencil and appears to have been erased but it is still barely legible).
Remarks:
1/7, 79 Sen. recalled res. of confirmation

Under the second entry there appears the following:

Action of Senate,
Jan. 14, 1879.
Date of commission:
(Blank.)
Remarks:
(Blank.)

124 Horace Austin, register of land office at Fargo, Dak.

Senate Executive Journal—Confirmed; ordered that President be notified "forthwith" April 1, 1879 (22:26). Motion to reconsider entered and return of resolution requested April 2 (22:28). Resolution returned April 7 (22:31). Reconsidered and nomination recommitted April 7 (22:32). Reported favorably and again confirmed April 22 (22:45–46).

White House Record.—Volume beginning March 4, 1877, arranged according to States at page 228. There are two entries. Under the first entry there appears:

Action of Senate,
Apl. 1, 79.
Date of commission:
(Blank.)
Remarks:
Res. of con. recalled. See Mess. Bk. p. 115.

Under the second entry there appears:

Action of Senate,
Apl. 22, 79.
Date of commission,
Apl. 24, 79.
Remarks:
(Blank.)

Norman Buck, associate justice of Supreme Court of Idaho.

Senate Executive Journal.—Rejected, 23–26, June 30, 1879 (22:91). Motion to reconsider entered and return of resolution requested July

1 (22:96). Resolution returned July 1 (22:97). Reconsidered and nomination laid on table July 1 (22:98). Renominated Dec. 1 (22:105). Confirmed, 34–13, Jan. 27, 1880 (22:210).

White House Record.—Volume beginning March 4, 1877, arranged according to States at page 266. There are two entries. Under the first there appears:

Action of Senate:
(Blank.)
Date of commission:
(Blank.)
Remarks:
[The remarks are not in point.]

125 Under the second entry there appears:

Action of Senate, Jan. 27, 1880.
Date of commission, Jan. 27, 80.
Remarks:
(Blank.)

Joseph H. Durkee, marshal for northern district of Florida.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 30, 1879 (22:95). Motion to reconsider entered and return of resolution requested July 1 (22:96). Resolution returned with the following message (22:97) from the President to the Senate:

To the Senate of the United States:

In compliance with the request of the Senate of this date, I herewith return to the Senate their resolution of June 30, 1879, declining to advise and consent to the appointment of Norman Buck to be associate justice of the supreme court of the United States for the Territory of Idaho, together with the resolution of the same date advising and consenting to the appointment of Joseph H. Durkee to be marshal of the United States for the northern district of Florida.

R. B. HAYES.

WASHINGTON, D. C., *July* 1, 1879.

After the resolution was returned, the motion to reconsider was laid on the table July 1 (22:97–98).

White House Record.—Volume beginning with March 4, 1877, arranged by States, at page 98:

Action of Senate,
June 30, 79.
Date of commission,
June 30, 79.
Remarks:
(Blank.)

126 Harry A. Conant, consul at Naples.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 29, 1880 (22:291). Motion to reconsider entered and return of resolution requested March 30 (22:292). Motion to reconsider withdrawn and President requested "to return

to the Senate its resolution of the 30th March requesting the return of the confirmation of Henry A. Conant" April 2 (22:301).

White House Record.—Volume beginning March 4, 1877, diplomatic, military, etc., at page 23.

Action of Senate,
Mch. 29, 1880.
Date of commission,
Mch. 29, 1880.
Remarks:
[The remarks are not in point.]

Mary J. Rockafellow, postmaster at Mechanicsburg, Pa.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 5, 1881 (22:436, 437). Return of resolution requested and motion to reconsider entered Jan. 6 (22:439). Resolution returned and reconsidered and nomination recommitted Jan. 7 (22:442–443). Reported favorably Feb. 9 (22:481). Nomination withdrawn Feb. 21 (22:491; proceedings of Feb. 25).

White House Record.—Volume beginning March 4, 1877, arranged according to States at page 56.

Action of Senate,
Jan. 5, 81.
Date of Commission:
(Blank.)
Remarks:
Res. of Con. returned to Senate 1/7, 81.
Nom. withdrawn 2/21, 81.

John P. Clum, postmaster at Tombstone, Ariz.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 16, 1882 (23:237). Resolution reconsidered and nomination recommitted Jan. 17 (23:239). Nomination withdrawn May 17 (23:415).

White House Record.—Volume beginning March 4, 1881, arranged according to States at page 200. There are two entries. Under the first entry there appears:

Action of Senate,
May 5, '81.
Date of commission:
(Blank.)
127 Remarks:
(Blank.)

Under the second entry there appears:

Office to which appointed
P. M. vice Brooks, confd. but not commsd.
Nominated,
Jan. 11, '82.

Under the columns Action of Senate and Date of Commission there appears [in red ink]:

Withdrawn, May 17, '82.

There also appears on page 200 of the same record an entry for F. E. Brooks:

Office to which appointed,
P. M. vice Clum rem. for cause.
Action of Senate,
Dec. 15, 81.
Date of commission,
May 23, '82.
Remarks:
(Blank.)

Albert S. Orr, postmaster at Wilkes-Barre, Pa.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 30, 1882 (23:260). Resolution reconsidered and nomination recommitted Jan. 31 (23:263). Reported favorably and again confirmed March 22 (23:337).

White House Record.—Volume beginning March 4, 1881, arranged according to States at page 40.

Action of Senate,
Mch. 22, '82.
Date of commission,
Mch. 31, '82.
Remarks:
(Blank.)

128 John Gallagher, jr., consul general at Rio de Janeiro.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 13, 1882 (23:284). Return of resolution requested and motion to reconsider entered Feb. 16 (23:289). Resolution returned Feb. 17 (23:292). Motion to reconsider withdrawn but renewed by another Senator Feb. 21 (23:297–298). Nomination withdrawn March 3 (23:311).

White House Record.—Volume beginning March 4, 1881, diplomatic, military, etc., at page 52:

Action of Senate,
Feby. 13, '82.
Date of commission [in red],
Withdrawn March 3, '82.
Remarks:
Res. of con. retd. by request of Sen. Feb. 17, '82.

Samuel C. Mills, justice of the peace for District of Columbia.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 20, 1882 (23:447, 448). Return of resolution requested and motion to reconsider entered June 21 (23:451). Resolution returned June 22 (23:454; proceedings of June 26). Motion to reconsider withdrawn June 26 (23:456).

White House Record.—Volume beginning March 4, 1881, arranged according to States at page 52:

Action of Senate,
June 20, '82.
Date of commission [in red],
Res. of confmn. recalled by Sen. 6/21.

Gustavus A. De Russy, colonel in Army.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" July 6, 1882 (23:477–478). Return of resolution requested and motion to reconsider entered July 7 (23:481). Reso-

lution returned July 8 (23:484; proceedings of July 12). Motion to reconsider laid on table July 12 (23:486).

White House Record.—Volume beginning March 4, 1881, diplomatic, military, etc., at page 31:

Action of Senate,
July 6, '82.
Date of commission,
July 15, '82.
Remarks:
Res. of con. recalled July 7, '82 [in red].
Orig. res. of con. retd. by Sen. forwd. to Dep. 7/13.

129 James H. Lloyd, postmaster at Liberty, Mo.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 6, 1883 (23:584). Motion to reconsider entered and return of resolution requested Jan. 9 (23:585). Resolution returned (23:589; proceedings of Jan. 12) with the following message from the President to the Senate:

To the Senate of the United States:

In compliance with a resolution of the Senate of the 9th instant, I return herewith its resolution of the 6th instant advising and consenting to the appointment of James H. Lloyd to be postmaster at Liberty, Clay County, Mo.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *Washington, January 11, 1883.*

Reconsidered and nomination recommitted Jan. 12 (23:589). [April 16, 1884 (24:247) the President sent this message: "I nominate William H. Robinson to be postmaster at Liberty, in the county of Clay and State of Missouri, in the place of James H. Lloyd, appointed and commissioned, but not confirmed by the Senate." This message probably refers to a recess appointment given to Lloyd on March 16, 1883. Records of Post Office Department, Vol. 52, Missouri, 1877–1895, page 70, "Reappointed (P) 16 Mar. 1883."]

White House Record.—Volume beginning with March 4, 1881, arranged by States at page 146:

Action of Senate,
Jan. 6, '83.
Date of commission:
(Blank.)
Remarks [in red ink]:
Res. of con. returned upon request of Sen. 1/11, '83.

[The above record of the White House does not indicate that a commission was issued to James H. Lloyd following his confirmation by the Senate on Jan. 6, 1883.] [See Appendix "A," infra, p. 110.]

Records of Post Office Department.—Volume 52, records of appointments of postmasters (Missouri, 1877–1895) at page 70 contains the following entries under Liberty:

P&S

James H. Loyd, 23 Dec. 74 re-appt. P&S 20 Dec. '78.
Confirmation withdrawn.
Reappointed (P&S) 6 Jan. 1883. Reappointed (P) 16 Mar., 83.

[The Postmaster General states that this record does not indicate whether a commission was or was not issued to James H. Lloyd following the confirmation by the Senate on January 6, 1883. See Appendix "B," infra, p. 111.]

130 J. R. Smith, postmaster at Wheaton, Ill.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 23, 1883 (23:609). Motion to reconsider entered and return of resolution requested Jan. 29 (23:616). Resolution returned Jan. 30 (23:620; proceedings of Feb. 3), with the following message from the President to the Senate:

To the Senate of the United States:

In compliance with the resolution of the Senate of the 29th instant, I return herewith its resolution of the 23d instant advising and consenting to the appointment of J. R. Smith to be postmaster at Wheaton, Du Page County, Ill.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *January* 30, 1883.

Reconsidered and nomination recommitted Feb. 3 (23:624).

[No further record in the Executive Journal.]

White House Record.—Volume beginning with March 4, 1881, arranged by States, at page 108:

Action of Senate,
Jan. 23, '83.
Date of commission:
(Blank.)
Remarks:
Res. of con. recalled by Senate 1/29, '83.

[The above record of the White House does not indicate that a commission was issued to Smith following his confirmation by the Senate on Jan. 23, 1883. See Appendix "A," infra, p. 110.]

Records of Post Office Department.—Volume 53, records of appointments of postmasters (Illinois, Oregon), 1878–1893, at page 60, contains the following entry under Wheaton:

J. R. Smith (P & S) 23 Jan., '83.

[The Postmaster General states that this record does not indicate whether a commission was or was not issued to J. R. Smith. See Appendix "B," infra, p. 111.]

131 Elisha J. Baily and Edward P. Vollum, surgeons in Army.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 12, 1883 (23:644–645). Motion to reconsider entered and return of resolution requested Feb. 15 (23:652). Resolution returned Feb. 19 (23:655; proceedings of Feb. 21). Reconsidered Feb. 21 (23:657). Recommitted Feb. 22 (23:667). Reported favorably and again confirmed Feb. 27 (23:684–685).

White House Record.—Volume beginning March 4, 1881, diplomatic, military, etc., at pages 13 and 171.

Action of Senate,
27
Feby. ∧ 12, '83.
Date of commission,
Mch. 3, '83.
Remarks:
Res. of con. retd. 2/19 Recd. back 2/27.

Peter J. A. Cleary, assistant surgeon in Army.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 12, 1883 (23:644–645). Motion to reconsider entered and return of resolution requested Feb. 15 (23:652).

Resolution returned Feb. 19 (23:655; proceedings of Feb. 21). Reconsidered Feb. 21 (23:657). Recommitted Feb. 22 (23:667). [The index indicates that Cleary was reported favorably and confirmed Feb. 27, but the journal itself does not so indicate; see 23:684, 685, 799.]

White House Record.—Volume beginning March 4, 1881, diplomatic, military, etc., at page 22.

Action of Senate,
27
Feby. 12, '83. [It appears that the entry originally was Feby. 27, '83; the figure 27 was scratched out and 12 inserted.]
Date of commission,
Mch. 3, '83.
Remarks:
Res. of con. retd. 2/19 recd. back 2/27.

132 Laban J. Miles, Indian agent at Osage Agency, Ind. T.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 15, 1883 (23:651–652). Motion to reconsider entered and return of resolution requested Feb. 22 (23:667). Resolution returned Feb. 26 (23:673) with the following message from the President to the Senate:

To the Senate of the United States:

In compliance with a resolution of the Senate of the 22d instant, I return herewith its resolution of the 15th instant advising and consenting to the appointment of Laban J. Miles, of Iowa, to be agent for the Indians of the Osage Agency in the Indian Territory.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *February* 26, 1883.

Motion to reconsider withdrawn Feb. 27 (23:693).

White House Record.—Volume beginning with March 4, 1881, arranged by States, at page 206:

Action of Senate,
27, '83
Feby. ∧ 15, '83.
Date of commission,
Feby. 20, 83.
Remarks:
Res. of con. retd. to Sen. Feby. 26, '83.
Re-confirmed Feby. 27, 83.

Records of Department of Interior.—In a vault of the Indian Office in the Department of the Interior there is a record marked "Executive appointments confirmed from 187[9] to [1891]". At page 117 of this record there is a copy of a commission made out to Miles as agent for the Indians of the Osage Agency in the Indian Territory. This copy reads in part as follows:

* * * * * * * * * during the term of FOUR YEARS from the 27th day of February, 1883, unless this commission be sooner revoked by the President of the United States for the time being * * *.

* * * * * * * *

GIVEN UNDER MY HAND at the city of Washington, the twentieth day of February in the year of our Lord one thousand

eight hundred and eighty-three and of the independence of the United States of America the one hundred & seventh.

CHESTER A. ARTHUR.

By the President:
H. M. TELLER,
Secretary of the Interior.

133 A record labelled "Roster of inspectors, agents, &c, Indian Office No. 2" also found in the vault mentioned above shows (page 15) that Miles served up to April 20, 1883, under a previous commission which began February 27, 1879, and ran to February 26, 1883.

George W. Pritchard, United States attorney for Territory of New Mexico.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 19, 1883 (23: 653, 654). Motion to reconsider entered and return of resolution requested Feb. 21 (23: 657). Resolution returned Feb. 24 (23: 671), with the following message from the President to the Senate:

To the Senate of the United States:

In compliance with a resolution of the Senate of the 21st instant, I return herewith its resolution of the 19th instant advising and consenting to the appointment of George W. Pritchard, of New Mexico, to be attorney of the United States for the Territory of New Mexico.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *February* 24, 1883.

Motion to reconsider failed March 3 (23: 721).

White House Record.—Volume beginning with March 4, 1881, arranged by States, at page 203:

Action of Senate,
Feby. 19, 83.
Date of commission,
Feby. 19, '83.
Remarks:
Confirmation retd. to Senate Feby. 24, '83.
Orig. res. of con. returned Mch. 3, 83.

Wilbur F. Richards, Postmaster at Clarksburg, W. Va.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 21, 1883 (23: 657, 658). Resolution reconsidered Feb. 22 (23: 667). Confirmed again Feb. 27 (23: 685).

134 *White House Record.*—Volume beginning March 4, 1881, arranged according to States at page 59.

Action of Senate,
Feby. 27, '83.
Date of commission,
Mch. 27, '83.
Remarks:
(Blank.)

135 Seth P. Mobly, Postmaster at Grand Island, Neb.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 28, 1883 (23:704). Motion to reconsider entered and return of resolution requested March 1 (23:710). Resolution returned March 3 (23:723). Reconsidered and nomination rejected March 3 (23:724, 725).

White House Record.—Volume beginning March 4, 1881, arranged according to States at page 159.

Action of Senate,
Feby. 28, '83.
Date of commission [in red].
Rejected 3/3, '83.
Remarks:
Res. of con. recalled Mch. 1, '83.

RULES OF JANUARY 11, 1884

On January 11, 1884, the Senate again adopted a new set of rules, effective Jan. 21 (Senate Journal, pp. 145–159), including the following:

RULE XIII *

1. When a question has been decided by the Senate, any Senator voting with the prevailing side may, on the same day or on either of the next two days of actual session thereafter, move a reconsideration; and if the Senate shall refuse to reconsider, or upon reconsideration shall affirm its first decision, no further motion to reconsider shall be in order unless by unanimous consent. Every motion to reconsider shall be decided by a majority vote, without debate, and may be laid on the table without affecting the question in reference to which the same is made, which shall be a final disposition of the motion.

2. When a bill, resolution, report, amendment, order, or message, upon which a vote has been taken, shall have gone out of the possession of the Senate, and been communicated to the House of Representatives, the motion to reconsider shall be accompanied by a motion to request the House to return the same; which last motion shall be acted upon immediately, and without debate, and if determined in the negative, shall be a final disposition of the motion to reconsider.

136 RULE XXXVIII **

1. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and the final question on every nomination shall be, "Will the Senate advise and consent to this nomination?" which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by unanimous consent.

2. All information communicated or remarks made by a Senator when acting upon nominations, concerning the character or qualifications of the person nominated, also all votes upon any nomination, shall be kept secret. If, however, charges shall be made against a person nominated, the committee may, in its discretion, notify such nominee thereof, but the name of the person making such

* Rule XIII is still in effect with the sole change that words "without debate" in paragraph 1, were stricken out on June 21, 1886 (Senate Journal, p. 945).

** Rule XXXVIII, as stated above, is still in effect without further change, except that paragraph 2 was amended by the Senate, 69–2, June 18, 1929 (Senate Journal, pp. 121–122), to read as follows:

"2. Hereafter all business in the Senate shall be transacted in open session, unless the Senate in closed session, by a majority vote, shall determine that a particular nomination, treaty, or other matter shall be considered in closed executive session, in which case all subsequent proceedings with respect to said nomination, treaty, or other matter shall be kept secret: *Provided*, That the injunction of secrecy as to the whole or any part of proceedings in closed executive session may be removed on motion adopted by a majority vote of the Senate in closed executive session: *Provided further*, That Rule XXXV shall apply to open executive session: *And provided further*, That any Senator may make public his vote in closed executive session.

"Anything in the rules of the Senate inconsistent with the foregoing is hereby repealed."

charges shall not be disclosed. The fact that a nomination has been made, or that it has been confirmed or rejected, shall not be regarded as a secret.

137 3. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion.

4. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by Senate.

5. When the Senate shall adjourn or take a recess for more thirty days, all motions to reconsider a vote upon a nomination which has been confirmed or rejected by the Senate, which shall be pending at the time of taking such adjournment or recess, shall fall; and the Secretary shall return all such nominations to the President as confirmed or rejected by the Senate, as the case may be.

6. Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President.

138 RULE XXXIX*

The President of the United States shall, from time to time, be furnished with an authenticated transcript of the executive records of the Senate, but no further extract from the Executive Journal shall be furnished by the Secretary, except by special order of the Senate; and no paper, except original treaties transmitted to the Senate by the President of the United States, and finally acted upon by the Senate, shall be delivered from the office of the Secretary without an order of the Senate for that purpose.

PRECEDENTS FROM JANUARY 11, 1884, TO JANUARY 1, 1931

139 Alfred T. Smith, major; John Bigelow, jr., William Lassiter, Charles R. Tyler, and Richard R. Steedman, first lieutenants; and William H. Johnston, jr., Charles P. George, Maury Nichols and Hampton M. Roach, second lieutenants, in Army.

Senate Executive Journal.—Confirmed Jan. 16, 1884 (24:132–133). Motion to reconsider entered and return of resolutions requested Jan. 23 (24:151). Resolutions returned Jan. 28 (24:156–157; proceedings of Jan. 29). Reconsidered and nominations recommitted

* Rule XXXIX, as stated above, is still in effect without further change.

Jan. 29 (24:157). Smith and Lassiter reported favorably Feb. 6 (24:172) and confirmed Feb. 11 (24:176). Bigelow reported favorably March 11 (24:209) and confirmed March 12 (24:212). All the others were reported favorably Feb. 15 (24:184) and confirmed Feb. 18 (24:187).

White House Record.—Volume beginning March 4, 1881, diplomatic, military, etc., in each case, as follows:

Alfred T. Smith, at page 149.
Action of Senate,
Feby. 11, '84.
Jan. 16, 84.
Date of commission,
Feby. 15, '84.
Remarks:
Res. of con. retd. to Senate 1/28, 84.
New con. Feby. 11, 84.

John Bigelow, jr., at page 13.
Action of Senate,
Mch. 12, 84.
Jan. 16, 84.
Date of commission,
Mch. 14, 84.
Remarks:
Res. of con. retd. to Senate 1/28, '84.
Res. of con. retd. by Senate 3/12, '84.

140 William Lassiter, at page 95.
Action of Senate,
Feby. 11, 84.
Jan. 16, 84.
Date of commission,
Feby. 15, 84.
Remarks:
Res. of con. retd. to Senate 1/28, 84.
New con. Feby. 11, 84.

Charles R. Tyler, at page 161.
Action of Senate,
Feby. 18, 84.
Jan. 16, 84.
Date of commission,
Feby. 25, 84.
Remarks:
Res. of con. retd. to Sen. 1/28, 84.
Recd. back under date of 2/18, 84.

Richard R. Steedman, at page 149.
Action of Senate,
Feby. 18, 84.
Jan. 16, '84.
Date of commission,
Feby. 25, 84.
Remarks:
Res. of con. retd. to Senate 1/28, 84.
Recd. back 2/18, 84.

141 William H. Johnston, at page 77. The entries are the same as those for Charles R. Tyler.

Charles P. George, at page 54. The entries are the same as those for Charles R. Tyler except:

Remarks:
Res. of con. retd. to Sen. 1/28, 84
Recd. back 2/18, 84.

Maury Nichols, at page 115. The entries are the same as those for Charles P. George.

Hampton M. Roach, at page 138. The entries are the same as those for Charles R. Tyler.

Joseph C. Ogle, postmaster at Lampasas, Tex.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 6, 1884 (24:172). Motion to reconsider entered and return of resolution requested Feb. 11 (24:176). Resolution returned and reconsidered and nomination recommitted Feb. 15 (24:183, 184). Reported favorably and again confirmed March 6 (24:204, 205).

White House Record.—Volume beginning March 4, 1881, arranged according to States at page 88.

Action of Senate,
Feby. 6, 84.
Mch. 6, 84.
Date of commission.
May 2, 84.
Remarks:
Res. of con. retd. Feby. 1[illegible] 84.
New confirmation Mch. 6, 84.

142 Thomas H. Reeves—Indian agent at Quapaw Agency, Ind. T.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" April 9, 1884 (24:242). Motion to reconsider entered and return of resolution requested April 10 (24:243). Resolution returned April 14 (24:244) with the following message from the President to the Senate:

To the Senate of the United States:

In compliance with a resolution of the Senate of the 10th instant, I return herewith its resolution of the 9th instant, advising and consenting to the appointment of Thomas H. Reeves, of Seneca, Mo., to be agent for the Indians of the Quapaw Agency in the Indian Territory.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *April* 14, 1884.

After the resolution was returned the nomination was reconsidered and recommitted April 14 (24:244, 245). Nomination withdrawn June 26 (24:300) when the President sent the following message to the Senate:

To the Senate of the United States:

I nominate William M. Ridpath, of Brazil, Ind., to be agent for the Indians of the Quapaw Agency in the Indian Territory, vice Henry M. Lawson, who has been appointed, but declines.

I withdraw the nomination of Thomas H. Reeves for this agency, which was sent to the Senate April 14, 1884.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *Washington, June* 26, 1884.

White House Record.—Volume beginning with March 4, 1881, arranged by States, at page 206:

Action of Senate,
April 9, 84.
Date of commission,
April 11, '84 (this is scratched out but is still barely legible).
Remarks:
Res. of con. retd. to Senate 4/14, 84 and nom. withdrawn June 26, '84.
[The remarks are written in a different ink from that used for the notation of Action of Senate and Date of commission.]

143 William Boult, register of land office at Natchitoches, La.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" July 4, 1884 (24:327, 330). Motion to reconsider entered and return of resolution requested July 5 (24:333). Resolution returned and reconsidered and nomination rejected July 5, 1884 (24:343).

White House Record.—Volume beginning March 4, 1881, arranged according to States at page 83.

Action of Senate [in red],
Rejected July 5, '84.
Date of commission,
(Blank.)
Remarks:
Res. of con. retd. to Sen. 7/5, '84.

David H. Hall, register of land office at Eureka, Nev.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 27, 1886 (25:296). Motion to reconsider entered and return of resolution requested Feb. 1 (25:298). Resolution returned and reconsidered and nomination recommitted Feb. 3 (25:304, 313). Nomination reported favorably July 17 (25:551), and again confirmed July 26 (25:563).

White House Record.—Volume beginning March 4, 1885, arranged according to States at page 172.

Action of Senate,
Jan. 27, '86.
July 26, '86.
Date of commission,
July 30, 1886.
Remarks:
Con. recalled. See Mess Bk. p. 47.
New confirmation July 26, '86.

William M. Campbell, Indian agent at Uintah and Ouray Agency, Utah.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 19, 1886 (25:330–331). Motion to reconsider entered and return of resolution requested Feb. 23 (25:333).

Resolution reconsidered and nomination recommitted Feb. 24 (25:336). Nomination reported favorably March 29 (25:373). Confirmed again May 5 (25:453).

144 *White House Record.*—Volume beginning March 4, 1885, arranged according to States at page 197.
Office to which appointed,
Agent for the Indians of the Uintah & Ouray Agency (consolidated) in Utah, to fill an original vacancy.
Nominated,
July 31, '86.
Action of Senate,
Aug. 3, '86.
Date of commission,
Aug. 6, '86.
Remarks [in red]:
Com. cancelled Nov. 12, '86. Campbell having failed to qualify. See Byrnes p. 229 Recess Book.

Charles H. Potter, Indian agent at Omaha and Winnebago Agency, Neb.

Senate Executive Journal.—Confirmed March 18, 1886 (25:362). Return of resolution requested March 29 (25:374). Resolution returned and reconsidered and nomination recommitted April 1 (25:384, 385). Reported adversely July 26 (25:559). Rejected Aug. 2 (25:586).

White House Record.—Volume beginning March 4, 1885, arranged according to States at page 158.
Action of Senate,
Mch. 18, '86.
Date of commission,
Rejected Aug. 2, '86.
Remarks:
Res. of Con. retd. to Sen. Apl. 1, '86 in compliance with its request.

H. M. Jewett, Consul at Sivas.

Senate Executive Journal.—Rejected March 29, 1886 (25:374). Return of resolution requested April 1 (25:385). Resolution returned and motion to reconsider entered April 5 (25:390,391). Reconsidered and nomination confirmed May 18 (25:468–469).

144½ *White House Record.*—Volume beginning March 4, 1885, diplomatic, military, etc., at page 76.
Action of Senate,
May 18, '86.
[In red under columns labeled Action of Senate and Date of commission] Rejected Mch. 29, '86.
Date of commission,
May 18, '86.
Remarks [in red]:
Res. of rejection retd. in compliance with Res. of the Sen. Apl. 5, '86 & Jewett was confirmed May 18, 1886.

Fred Puhler, postmaster at Ada, Minn.

Senate Executive Journal.—Confirmed Jan. 10, 1887 (25:690). Motion to reconsider entered and return of resolution requested Jan. 19 (25:704). Resolution returned with the following message (25:706) from the President to the Senate:

To the Senate of the United States:

In compliance with a resolution of the Senate of the 19th instant, I return herewith its resolution of the 10th instant advising and consenting to the appointment of Fred Puhler to be postmaster at Ada, Minn.

GROVER CLEVELAND.

EXECUTIVE MANSION, *January* 20, 1887.

After the return of the resolution, the nomination was reconsidered and recommitted Jan. 20 (25:707). Renominated Dec. 14 (26:39). Confirmed Jan. 10, 1888 (26:134).

White House Record.—Volume beginning with March 4, 1885, arranged by States, at page 135:

Action of Senate,
Jan. 10, '87.
Date of commission,
(Blank.)
Remarks:
(Blank.)

[The above record of the White House does not indicate that a commission was ever issued by the President to Puhler following the confirmation of the Senate on January 10, 1887. See Appendix "A," infra, p. 110.]

145 *Records of Post Office Department.*—Volume 57, records of appointments of postmasters (Minnesota-Nebraska, 1881–1892) at page 133, contains the following entry under Ada:

Confirmation withdrawn Jan. 19, 1887
(P&S) 10 Jan. 87. (P&S) 10 Jan. 88.
Fred Puhler (P) 25 Oct. 86. Fred Puhler (P) 7 Mar. 87.

[The words "Confirmation withdrawn Jan. 19, 1887" are in red ink.]

[The Postmaster General states that this record does not indicate whether a commission was or was not issued to Frederick Puhler, following confirmation by the Senate on Jan. 10, 1887. Appendix "B," infra, p. 111.]

Henry Fox, postmaster at Healdsburg, Cal.

Senate Executive Journal.—Confirmed Jan. 29, 1887 (25:719–720). Motion to reconsider entered and return of resolution requested Feb. 12 (25:736). Resolution returned Feb. 16 (25:746; proceedings of Feb. 21). [No subsequent proceedings recorded in the journal; but Dec. 11, 1890, Joseph B. Prince was nominated to the same position "in the place of Henry Fox, resigned" (27:795).]

White House Record.—Volume beginning March 4, 1885, arranged according to States at page 165.

Action of Senate,
Jan. 29, '87.
Date of commission,
Mch. 15, '87.
Remarks:
Res. of con. retd. Feby. 16 in comp. with request of the Senate. Recd. back Mch. 7, 87.

Edwin Eells, Indian agent at Nisqually and Skokomish Agency, Wash.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" July 20, 1888 (26:313–314). Motion to reconsider entered and return of resolution requested July 21 (26:314). Resolution returned July 23 (26:315; proceedings of July 30). Reconsidered July 30 (26:318). Confirmed again Sept. 18 (26:349).

White House Record.—Volume beginning March 4, 1885, arranged according to States at page 192.

Action of Senate,
July 20, '88; Sept. 18, '88.
Date of commission,
Sept. 22, 1888.
Remarks:
Res. of con. retd. to Senate in comp. with request, 7/23, '88. [All this in red, rest in black] in Wash. Tery. See copy of nom. on Message Book, p. 282. Eells was confd. 2d time Sept. 18, '88.

146 Alfred Hedberg, captain in the Army.

Senate Executive Journal.—Confirmed Feb. 26, 1889 (26:464). Motion to reconsider entered, return of resolution requested, resolution returned and reconsidered, and nomination again confirmed, all Feb. 28 (26:467–468, 470).

White House Record.—Volume beginning March 4, 1885, diplomatic, military, etc., at page 66.

Action of Senate,
Feby. 28, '89 [the 8 in 28 was apparently a 6 which was changed to an 8]
Date of commission,
Mch. 1, '89.
Remarks [first sentence in red]:
Res. of con. retd. 2/28 in comp. with req. Retd. Feby 28/89. "In accordance with an act of Cong. approved Apl. 16, 1888, I nominate the person herein named for appmt. in the Army of the U. S."

Edwin I. Kursheedt, marshal for eastern district of Louisiana.

Senate Executive Journal.—Nominated March 18, 1889 (27:15), the following message:

To the Senate of the United States:

I nominate Edwin I. Kursheedt, of Louisiana, to be marshal of the United States for the eastern district of Louisiana, vice R. B. Pleasants, deceased.

BENJ. HARRISON.

EXECUTIVE MANSION,
Washington, March 18, 1889.

Confirmed; ordered that President be notified "forthwith" March 27, 1889 (27:45, 46). Motion to reconsider entered and return of resolution requested March 29 (27:51). [The Journal does not record whether or not the resolution was returned.] Motion to reconsider and nomination referred to Judiciary Committee April 1 (27:59). Resolution reconsidered and nomination placed on calendar April 2 (27:61). The record of the proceedings of December 9 (27:71) contains the following letter:

To the Senate of the United States:

I nominate John B. Donnally, of Louisiana, to be marshal of the United States for the eastern district of Louisiana, vice Reuben B. Pleasants, deceased.

Appointed (April 17, 1889) during the recess of the Senate.

BENJ. HARRISON.

EXECUTIVE MANSION, *December 5, 1889.*

147 *White House Record.*—Volume beginning with March 4, 1889, arranged by States, at page 85:

Action of Senate,
March 27, '89.
Date of commission,
~~March 27, '89.~~
Remarks:
Confmn. recalled by the Sen. 3/29.

[The line drawn through the entry under date of commission is made in pencil. The remarks are likewise entered in pencil.]

Henry G. Rising, Postmaster at Marshall, Mo.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 16, 1890 (27:374, 376). Motion to reconsider entered and return of resolution requested Jan. 20 (27:379). [No subsequent proceedings recorded in the Journal; but Jan. 30, 1894, Azariah Peecher was nominated "in the place of Henry G. Rising, whose commission expired January 16, 1894" (29:369).]

White House Record.—Volume beginning March 4, 1889, arranged according to States at page 150.

Action of Senate,
Jan. 16, 90.
Date of commission,
Feby. 21, '90.
Remarks:
Res. recalled by Sen. 1/20, '90 & retd. 1/22. Con. recd. back from Sen. 2/6, '90.

George W. (or N.) Bradley, postmaster at Guilford, Conn.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 7, 1890 (27:519). Motion to reconsider entered and return of resolution requested March 10 (27:520). Resolution returned March 11 (27:522; proceedings of March 12). Reconsidered and nomination recommitted and reported favorably March 12 (27:522–523). Confirmed again March 13 (27:529).

White House Record.—Volume beginning March 4, 1889, arranged according to States at page 21.

Action of Senate,
13
Mch. ∧ ~~7~~, '90.
Date of commission,
Mch. 24, '90.
Remarks:
Confmn recalled by Sen. Mch. 10 '90, retd Mch 11 '90
Recd. back corrected to Geo. N. 3/13, '90.

148 Vinson T. Williams, postmaster at Stanberry, Mo.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 7, 1890 (27:519). Motion to reconsider entered and return of resolution requested March 10 (27:520). Resolution returned March 11 (27:522; proceedings of March 12). Motion to reconsider withdrawn April 16 (27:581).

White House Record.—Volume beginning March 4, 1889, arranged according to States at page 151.

Action of Senate,
Mch. 7, '90.
Date of commission,
Apl. 30, '90.
Remarks:
Confmn. recalled by Sen. Mch. 10, '90 Retd. Mch. 11, '90
Recd. back Apl. 17, '90.

John A. Flattery, postmaster at Oklahoma City, Okla.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 19, 1894 (29:512, 513). Motion to reconsider entered and return of resolution requested March 20 (29:514). [The Journal does not record whether or not the resolution was returned.] Resolution reconsidered and nomination recommitted March 21 (29:517). Reported favorably March 22 (29:522). Confirmed again March 28 (29:524).

White House Record.—Volume beginning March 4, 1893, arranged according to States at page 165.

Action of Senate,
28
Mch. ~~19~~, '94.
Date of commission,
Apl. 10, '94.
Remarks [in pencil]:
Res. of confm retd. to Sen. 3/21, '94 &c.

Charles D. Clark, district judge for Eastern and Middle Districts of Tennessee.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Dec. 18, 1894 (29:844). Motion to reconsider entered and return of resolution requested Dec. 20 (29:845). [The Journal does not record whether or not the resolution was returned.] Resolution reconsidered and nomination recommitted Jan. 4, 1895 (29:867). Reported favorably and again confirmed Jan. 21 (29:892).

White House Record.—Volume beginning March 4, 1893, arranged according to States at page 187.

Action of Senate,
Dec. 18, '94;
2nd confirmation January 21, '95.
Date of commission,
Jan. 21, '95.
149 Remarks:
Confirmation retd. to Senate Jan. 3, '95, in compliance with Res. of Dec. ~~18~~ 20, '94.

James J. Davidson, postmaster at Swedesboro, N. J.; John W. Goddard, postmaster at Bayonne, N. J.; Michael A. Devine, postmaster at Atlantic City, N. J.; Charles H. Pierson, postmaster at Bridgeton, N. J.; Charles W. Scott, postmaster at Cramer Hill, N. J.; R. Howard Thorn, postmaster at Ocean City, N. J.; Herman

J. Kohlhaas, postmaster at Paterson, N. J.; and William Gill, postmaster at Rockaway, N. J.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 16, 1897 (30:407–408). Return of resolutions requested and motion to reconsider entered Feb. 17 (30:412). Resolutions returned Feb. 17 (30:414–415; proceedings of Feb. 18). Motion to reconsider, in case of Kohlhaas, laid on table, 38–23, and in other cases withdrawn, Feb. 23 (30:428–429).

White House Record.—Volume beginning March 4, 1893, arranged according to States at page 130. In none of these cases is there an entry either under "Date of commission" or under "Remarks," though it appears from the Executive Journal that the motion to reconsider was withdrawn. Commissions for these nominees were never issued. President McKinley came into office on March 4, 1897.

Dallas B. Smith, postmaster at Opelika, Ala.

Senate Executive Journal.—Rejected, 18–31; ordered that President be notified "forthwith" May 16, 1898 (31:784). Return of resolution requested and motion to reconsider entered May 18 (31:799). Resolution returned May 19 (31:805). Motion to reconsider taken up but not disposed of June 27 (31:952). Renominated Dec. 14 (31:1074).

White House Record.—Volume beginning March 4, 1897, arranged according to States at page 2.

Action of Senate [in red],
Rejected May 16, 1898.
Date of commission,
(Blank.)
Remarks:
Res. of May 18, '98, Req. return of Res. of 5/16, refusing &c. appmt. of Smith. See Mess. Bk. Orig. rejection recd. from Senate July 9, '98 P. O. Dept. 7/11.

150 Charles W. Lewis, postmaster at Fernandina, Fla.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" May 24, 1898 (31:824). Return of resolution requested and resolution ordered reconsidered and recommitted when returned, May 25 (31:831–832). Resolution returned May 26 (31:833; proceedings of May 27). Reported favorably July 6 (31:984). Confirmed again July 7 (31:991).

White House Record.—Volume beginning March 4, 1897, arranged according to States at page 32.

Action of Senate,
July 7, '98 (New Confmn.)
May 24.
Date of commission,
July 29, '98.
Remarks:
Res. of confmtn. returned to Sen. May 26, '98 (in comp. with res. of 25th May).

Samuel H. Vick, Postmaster at Wilson, N. C.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" May 24, 1898 (31:824). Return of resolution requested and motion to reconsider entered May 27 (31:838). Resolution returned May 31 (31:846). [No subsequent proceedings recorded in the Journal.]

White House Record.—Volume beginning March 4, 1897, arranged according to States at page 148.

Action of Senate,
[in pencil] May 24, '98.
[in ink] May 24, '98.
Date of commission,
[in pencil] June 30, '98.
Remarks [in pencil]:
Res. of confmn retd. 5/31, '98 in comp. with res. of 5/27, '98.

Daniel G. Engle, postmaster at Marietta, Pa.; Henry F. Hershey, postmaster at Steelton, Pa.; Henry D. Ruth, postmaster at Lansdale, Pa.; and William D. Williams, jr., postmaster at McDonald, Pa.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 31, 1900 (32:447). Return of resolutions requested and resolutions reconsidered April 2 (32:447). Resolutions returned April 3 (32:448; proceedings of April 4). Nominations recommitted April 4 (32:448). Engle, Hershey, and Ruth reported favorably April 14 (32:460) and again confirmed April 16 (32:461). [Williams was renominated Dec. 14, 1900 (32:606) and confirmed March 2, 1901 (32:725, 726).]

151 *White House Record.*—Volume beginning March 4, 1897, arranged according to States at page 179.

Action of Senate,
Mch. 31, 1900 (in all four cases).
There is an additional entry under this for all of the nominees except William D. Williams, jr., as follows:
New confm ["confmn" in case of Engle] Apl. 16, 1900.
Date of commission,
For Daniel G. Engle and Henry D. Ruth the entry is:
Apl. 28, 1900.
For Henry F. Hershey the entry is:
May 1, 1900.
For William D. Williams, jr., there is no entry.
Remarks:
The following remarks are applicable to all four of the nominees:
Res. of confirmations returned to Senate Apl. 3, 1900 in compliance with res. of April 2, 1900.

A. M. Smith, postmaster at Brunswick, Ga.[1]

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 28, 1902 (31:594 or 622*). Motion to reconsider entered and return of resolution requested June 30 (31:596 or 624*). Resolution returned and reconsidered, and nomination recommitted July 1 (31:603 or 631*). [No subsequent proceedings recorded in the Journal.]

White House Record.—Volume beginning March 4, 1901, arranged according to States at page 36.

Action of Senate,
(Blank.)
Date of commission,
(Blank.)
Remarks:
6/30/1902. Resolution of confirmation of the 28th instant returned in compliance with resolution of June 30, 1902.

[1] From this point on, volume and page references are to the original journals.
* Double paging in this volume.

152 William Plimley, assistant treasurer at New York.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 10, 1903 (33:10). Motion to reconsider entered and return of resolution requested March 12 (33:17). Resolution returned March 13 (33:19). Nomination withdrawn March 13 (33:46). Resolution of confirmation considered March 18 (33:50).

White House Record.—Volume beginning with March 4, 1901, arranged by States, at page 142:

Action of Senate,
Mch. 10, 1903.
Date of commission,
Mch. 12, 1903.
Remarks: Mch.

Records of Treasury Department.—

1. A memorandum as follows:

Letter from Mr. Loeb, secretary to the President, about March 9th, stating that the President desired nomination prepared and sent over for William Plimley of New York, to be assistant treasurer at New York.

Nomination prepared and sent to the President March 10th.

Notice of nomination and confirmation in Congressional Record of March 10th.

Official notice of confirmation from the Secretary of the Senate, through the White House, dated March 10th, received at the appointment division March 11th.

Commission prepared March 12th and sent to the White House; was signed by the President, attested by the Secretary of the Treasury, received the seal of the Treasury Department, and a letter notifying Mr. Plimley of his appointment and enclosing official bond for execution by him was prepared and mailed, addressed, "William Plimley, 151 West 8th Street, New York City"; all of which occurred on the same date.

Shortly after four o'clock on March 12th, the chief of the division of appointments was called up on the telephone by the White House and asked what papers were on file in the Plimley case, to which the chief replied, all papers which accompanied the President's direction that nomination be prepared and no others. The White House then asked what was the status of the case; answer: Commission signed by the President had received the seal of the Treasury Department;
that a bond had been prepared, and letter notifying Mr.
153 Plimley of his appointment had been placed in the mail.
White House asked to hold up everything until Mr. Latta of the White House staff could come over. Mr. Latta immediately came to the division of appointments bringing with him the resolution of the Senate recalling its notice of confirmation, and with the direction of the President to get commission and all papers in the case and take them with him to the White House.

The chief of appointment division conferred with the Secretary and, with his knowledge and consent, gave to Mr. Latta all papers on file here, but did not deliver the commission, the same being inaccessible at that time.

The chief of appointment division, on his own responsibility, but with the knowledge of the Secretary, intercepted bond and letter

mailed to Mr. Plimley in the Washington City Post Office and had it returned to the department.

The next day, at the request of the President, Mr. Plimley's commission, together with a brief containing citations from the decisions of the Supreme Court of the United States and the Attorney General, was taken to the White House by the Secretary, where they still remain.[8]

On March 18th directions were received from the White House by telephone to prepare a request for the withdrawal of the nomination of Mr. Plimley from the Senate. Request was promptly prepared and taken to the White House by the chief of division of appointments, who delivered the same to Mr. Loeb, the President's Secretary. Later in the day directions were received by wire from the White House to prepare a nomination of Hamilton Fish of New York as assistant treasurer at New York in place of Jordan, deceased. Nomination prepared and sent to the White House by messenger.

2. An envelope addressed to "Mr. William Plimley, 151 West 80th St., N. Y. City," postmarked "March 12 5.30 p. m., 1903" and having on it a notation in red ink reading "Return to writer on request by phone. 3.12.03.#74." In this envelope there is an official bond in the amount of $400,000 and, also, a slip of paper with a notation "Senate notice of confirmation to Plimley sent to Pres. March 13, 03 at his request." The letter of March 12 addressed to William Plimley in this envelope is as follows:

154 Notice of appointment under confirmation and transmitting bond.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 12, 1903.

Mr. WILLIAM PLIMLEY,
151 West 80th Street, New York City.

SIR: By direction of the Secretary, I have to inform you that the President of the United States has, by and with the advice and consent of the Senate, appointed you to the office of assistant treasurer of the United States at New York, N. Y., by a commission dated March 12, 1903.

You will therefore enter into bond with the United States in the penal sum of four hundred thousand dollars ($400,000) in accordance with the enclosed form and the rules regulating the execution thereof, and transmit the same to this office for examination, approval and file.

Your commission will be forwarded when your official bond shall have been received and approved.

Respectfully,

(Signed) CHAS. LYMAN,
Chief, Division of Appointments.

(Incl.)

Theodore P. Shonts, Charles E. Magoon, Benjamin M. Harrod, Oswald H. Ernst, Peter C. Hains, and Mordecai T. Endicott, members of Isthmian Canal Commission.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Dec. 16, 1905 (38:107). Resolution reconsidered and return of resolution requested Dec. 20 (38:125). Resolution re-

[8] With the cooperation of the office of the Attorney General, counsel for the petitioner attempted to trace the brief referred to in this memorandum, but they were unsuccessful.

turned and nominations recommitted Dec. 21 (38:129). [Each of these was given a recess appointment immediately after the adjournment of Congress.]

White House Record.—Volume beginning with March 4, 1905, for diplomatic, military, etc.

Theodore P. Shonts, at page 126.
Confirmed,
Dec. 16, 1905.
Commissioned,
Confirmation res. withdrawn Dec. 21, 1905.
Remarks:
(Blank.)

155 Charles E. Magoon, at page 93.
Confirmed,
Dec. 16, 1905.
Commissioned,
Confirmation withdrawn Dec. 21, 1905.
Remarks:
(Blank.)

Benjamin M. Harrod, at page 60.
The entries are the same as those for Charles E. Magoon.

Oswald H. Ernst, at page 41.
Confirmed,
Dec. 16, 1905.
Commissioned,
Confirmations withdrawn Dec. 21, 1907.
Remarks:
(Blank.)

Peter C. Hains, at page 60.
The entries are the same as those for Charles E. Magoon.

Mordecai T. Endicott, at page 41.
Confirmed,
Dec. 16, 1905.
Commissioned,
Confirmations withdrawn Dec. 21, 07.
Remarks:
Dec. 11, 1905 new nom. as Civ. Engr. U. S. N.

John F. Wetherill, postmaster at Spencerville, O.

Senate Executive Journal.—Rejected; ordered that President be notified "forthwith" Jan. 14, 1908 (40:183). Motion to reconsider entered and return of resolution requested Jan. 16 (40:191). Resolution returned Jan. 20 (40:194). Motion to reconsider withdrawn and resolution sent back to President May 16 (40:420).

White House Record.—Volume beginning March 4, 1905, arranged according to States at page 180.
Confirmed,
Rejected Jan. 14, 1908.
Commissioned,
(Blank.)

156 Remarks:
To P. O. Jan. 15, 1908. Resolution of rejection returned to Senate Jan. 20, 1908. Rejection returned & to P. O. May 18, 1908.

Robert A. McDonald, postmaster at Grand Rapids, Wis.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 26, 1908 (40:283). Motion to reconsider entered and return of resolution requested Feb. 27 (40:287). Resolution returned March 2 (40:290). Motion to reconsider withdrawn and resolution sent back to President April 30 (40:399).

White House Record.—Volume beginning March 4, 1905, arranged according to States at page 252.

Confirmed,
Feby. 26, 1908.
Resolution of confirmation returned Senate 3/2/08.
Resolution of confirmation received again at White House Apr. 30, 1908 & to P. M. G. May 1, 08. Feby. 28, 1908. Sen Res. requesting return of res. of confirmation Rec. & sent to P. O. Dept.
Commissioned,
May 12, 1908.
Remarks:
[All entries in this column are marked with arrows to go under "confirmed" and hence are listed under that heading above.]

Charles L. Farrar, postmaster at Macon, Mo.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" April 22, 1908 (40:379). Motion to reconsider entered and return of resolution requested April 24 (40:383). Resolution returned April 29 (40:396). Motion to reconsider withdrawn and resolution sent back to President May 6 (40:406).

White House Record.—Volume beginning March 4, 1905, arranged according to States at page 129.

Confirmed,
Apr. 22, 1908.
Commissioned,
May 12, 1908.
Remarks:
Res. of Apr. 24, 1908, asking return.
Confirmation ret. Apr. 29, 08.
Returned & sent to P. O. May 7, 08.

157 Joseph Davis, postmaster at Taylor, Pa.

Senate Executive Journal.—Confirmed April 28, 1908 (40:394) Motion to reconsider entered and return of resolution requested May 1 (40:401). Resolution returned May 4 (40:402). Reconsidered and nomination recommitted May 21 (40:435). Nomination withdrawn May 22 (40:436).

White House Record.—Volume beginning March 4, 1905, arranged according to States at page 201.

Confirmed,
Apr. 28, 1908.
Commissioned,
Nomination withdrawn, May 22, 1908.
Remarks:
May 2, 08—Sen. res. of 5/1/08—asking return of res. of con.
May 4, 08—Res. ret. to Sen.

J. C. Stancil, postmaster at Smithfield, N. C.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 11, 1910 (43:174). Motion to reconsider entered and return of resolution requested March 14 (43:177). Resolution returned March 15 (43:179). Reconsidered and nomination recommitted March 16 (43:181). Reported favorably April 15 (43:219). Confirmed again May 17 (43:245).

White House Record.—Volume beginning with March 4, 1909, arranged according to States at page 185.

Confirmed,
May 17, 1910.
Mch. 11, 1910.
Commissioned,
July 5, 1910.
Remarks:
Mch. 14, 1910—Senate requested return of res. of confirmation.
Mch. 15, 1910—Returned.

Everett Martin Balcom, second lieutenant of Infantry.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 3, 1911 (44:119). Motion to reconsider entered and return of resolution requested Feb. 6 (44:120). Resolution returned and reconsidered and nomination recommitted Feb. 10 (44:124). Nomination withdrawn Feb. 21 (44:143).

White House Record.—Volume beginning with March 4, 1909, for diplomatic, military, etc., at page 16.

Confirmed,
Feby. 3, 1911.
158 Commissioned,
Feby. 21, 1911.
Nomination withdrawn.
Remarks:
Feby. 10, 1911—resolution of confirmation returned to Senate in compliance with res.

John O. Huey, postmaster at Mannington, W. Va.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Dec. 20, 1911 (46:52). Motion to reconsider entered Dec. 21 (46:56). Motion to reconsider withdrawn and resolution transmitted "forthwith" to President Jan. 30 (31), 1912 (46:96).

White House Record.—Volume beginning with March 4, 1909, arranged according to States at page 278.

Confirmed,
Dec. 20, 1911.
Commissioned,
Feby. 28, 1912.
Remarks:

Atlas M. Lee, postmaster at Huntingdon, Tenn., and William T. H. Thorn, postmaster at Rutherford, Tenn.

Senate Executive Journal.—Confirmed March 4, 1912 (46:135). Motion to reconsider entered and return of resolution requested March 13 (46:147). Resolution returned March 15 (46:152; proceedings of March 18), reconsidered and nominations recommitted March 18 (46:152). Nominations withdrawn Aug. 1 (46:257).

White House Record.—Volume beginning with March 4, 1909, arranged according to States at page 248.

Confirmed,
Mch. 4, 1912.
Commissioned,
Withdrawn Aug. 1, 1912.
Remarks:
Res. returned to Sen. 3/15/12 in response to res. of 3/13/12.

159 Lawrence C. Wines, postmaster at Maywood, Ill.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" July 18, 1912 (46:245-246). Motion to reconsider entered and return of resolution requested Aug. 1 (46:258). Resolution returned Aug. 3 (46:263; proceedings of Aug. 6). Nomination withdrawn Aug. 6 (46:263).

White House Record.—Volume beginning with March 4, 1909, arranged according to States at page 64.

Confirmed,
July 18, 1912.

In the space under the headings, Commissioned and Remarks, appears the following:

Confirmation res. returned to Sen. Aug. 3, 1912.
Nomination withdrawn Aug. 6, 1912.

John H. McEniry, postmaster at Bessemer, Ala.

Senate Executive Journal.—Confirmed July 27, 1912 (46:254). Motion to reconsider entered and return of resolution requested July 29 (46:255). Resolution returned and reconsidered and nomination recommitted Aug. 1 (46:257, 258). Nomination reported favorably and again confirmed Aug. 15 (46:276).

White House Record.—Volume beginning with March 4, 1909, arranged according to States at page 3.

Confirmed,
Aug. 15, 1912.
July 27, 1912.
Commissioned,
Aug. 24, 1912.
Remarks:
Aug. 1, 1912 confirmation res. returned to Sen.
Memo attached to page with paper clip contains copy of Senate resolution of July 29 with notation reading "Original sent to Post Office Dept. July 30, 1912 [this is typed and the remainder is in ink]. Again confirmed Aug. 6 15, 1912 and sent to P. M. G. Aug. 16, 1912.

160 Samuel C. Campbell, postmaster at Enid, Okla.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" June 2, 1913 (48:154–155). Return of resolution requested June 6 (48:163). Resolution returned and reconsidered June 10 (48:179). Nomination recommitted June 17 (48:195). Reported favorably July 14 (48:275). Confirmed again July 15 (48:277).

White House Record.—[4]
Nominated,
5/15/13.
Confirmed,
6/2/13.
7/15/13.
Commissioned,
7/29/13.
Remarks:
June 10, 1913 resolution of confirmation returned to Senate.

Thomas Fox, postmaster at Sacramento, Cal.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Aug. 5, 1913 (48:336). Motion to reconsider entered and return of resolution requested Aug. 6 (48:338). Resolution returned Aug. 9 (48:344; proceedings of Aug. 11). Reconsidered and nomination recommitted Aug. 11 (48:344). Reported favorably Aug. 21 (48:369). Considered Aug. 27 (48:385), Sept. 8 (48:410) and Sept. 9 (48:413), and confirmed, 37–11, Sept. 10 (48:416–418).

White House Record.—
Nominated,
5/15/13.
Confirmed,
8/5/13.
Confirmed again,
9/10/13.
Commissioned,
9/13/13.
Remarks:
Aug. 9, 1913 resolution of confirmation returned to Senate.

161 Myrtie Nelson, postmaster at Bowman, N. D.; J. W. Stambaugh, postmaster at Carrington, N. D.; W. W. Smith, postmaster at Valley City, N. D.; and Frank Renning, postmaster at Velva, N. D.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Sept. 18, 1913 (48:436). Motion to reconsider entered and return of resolutions requested Sept. 22 (48:437). Resolutions returned, message ordered to lie on the table, and names restored to the calendar Sept. 25 (48:442–443). Nominations recommitted Sept. 29 (48:448). [All four persons were renominated Dec. 20, 1913 (49:10). Stambaugh and Renning were confirmed March 11, 1914 (49:177). Nelson was confirmed March 12 (49:179) but reconsidered March 13 (49:182). Smith was not confirmed in 1914.]

[4] Beginning with the administration of President Wilson, the records of nominations and commissions are kept on cards.

White House Record.—
Myrtie Nelson:
Nominated,
12/15/13.
Confirmed.
NOT CONFIRMED.
Nominated,
12/18/14.
Confirmed,
12/29/14,
Commissioned,
1/19/15.
J. W. Stambaugh:
Confirmed,
3/11/14.
Commissioned,
4/1/14.
W. W. Smith:
Nominated,
12/18/14.
Confirmed,
12/29/14.
Commissioned,
2/3/15.
Frank Renning:
Confirmed,
3/11/14.
Commissioned,
3/26/14.

162 A. W. Howell, Postmaster at Frost, Tex.

Senate Executive Journal.—Confirmed; ordered that and President be notified "forthwith" Jan. 12, 1914 (49:40, 41, 43). Return of resolution requested Jan. 13, (49:44). Resolution returned and nomination recommitted Jan. 17 (49:54, 55). Reported favorably Jan. 27 (49:79). Confirmed again Jan. 30 (49:88).

White House Record.—
Nominated,
12/22/13.
Confirmed,
1/2/14.
Commissioned,
2/19/14.
Remarks:
Jan. 17, 1914 Res. of Conf. returned to Sen. in response to Res. 1/13/14

James Norton, Postmaster at Hackensack, N. J.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 12, 1914 (49:40, 42, 43). Return of resolution requested Jan. 13 (49:44). Resolution returned and nomination recommitted Jan. 17 (49:54, 55). Reported favorably Feb. 11 (49:113). Confirmed again Feb. 18 (49:125).

White House Record.—
Confirmed,
1/12/14.
Again confirmed,
2/18/14.
Commissioned,
3/4/14.

Harry W. Blaisdell, James L. Brown, Joseph D. Halleck, Harry H. Harvey, Harry D. Johnson, Ernest W. Lacy, Joseph A. Mahoney, Anson F. McCreary, Leon Martin, Eugene H. Tennent, and Lucien C. Williams, assistant dental surgeons in Navy; George C. Fowler and William M. Thebaut, assistant dental surgeons in Dental Reserve Corps.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 5, 1916 (51:155, 157). Resolution reconsidered and nominations recommitted Jan. 6 (51:178). Reported favorably Feb. 3 (51:266). Confirmed again; ordered that President be notified "forthwith" Feb. 7, 2:08 p. m. (51:271, 272). Confirmation reconsidered and return of resolution requested Feb. 7, 5:18 p. m. (51:272). Resolutions returned and nominations restored to the calendar Feb. 10 (51:275–276). [No subsequent proceedings recorded in the Journal.]

White House Record.—There is no record in the White House concerning these cases.

163 William M. Huntley, postmaster at Rush Springs, Okla.

Senate Executive Journal.—Confirmed Jan. 11, 1916 (51:203–204). Return of resolution requested Jan. 17 (51:230). Resolution returned Jan. 25 (51:247). Reconsidered and nomination rejected Jan. 27 (51:253).

White House Record.—
Confirmed,
1/11/16.
Commissioned,
Rejected, Jan. 27, 1916.

Frank Seymour Reed, receiver of public moneys, and Edward Malcolm Kirton, register of land office, at Glasgow, Mont.[10]

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" July 27, 1921 (60:378). [M. C. Latta, of the White House staff, signed general receipt dated 10.45 a, m., July 28.] Return of resolution requested Aug. 1 (60:393). Resolution returned and nominations recommitted Aug. 10 (60:422). Reported favorably Aug. 23 (60:489). Confirmed again Aug. 24 (60:509).

White House Record.—
Confirmed,
7/27/21.
8/24/21.
Commissioned,
8/24/21.

[10] From this point on, references are given, in brackets at the appropriate place under "Senate Executive Journal," to pertinent matter contained in the receipt books on file in the office of the Executive Clerk of the Senate.

James R. Miller, postmaster at Strasburg, Va.

Senate Executive Journal—Confirmed; ordered that President be notified "forthwith" Jan. 17, 1922 (61:183). [I. R. Smith signed general receipt dated 11.05 a. m., Jan. 18.] Return of resolution requested and motion to reconsider entered Jan. 18 (61:194). Resolution returned and reconsidered, and nomination recommitted Jan. 20 (61:198). Reported favorably March 24 (61:589–590). Confirmed again March 27 (61:610).

White House Record.—
Confirmed,
1/17/22.
3/27/22.
Commissioned,
4/8/22.

164 William Pennar, postmaster at Laporte, Minn.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Feb. 28, 1922 (61:411, 412). [I. R. Smith signed general receipt dated 11.35 a. m. March 1.] Return of resolution requested March 2 (61:432). Resolution returned March 4 (61:456; proceedings of March 7). Reconsidered and nomination recommitted March 7 (61:457). Reported favorably March 23 (61:563). Confirmed again March 24 (61:591).

White House Record.—
Confirmed,
3/24/22.
Commissioned,
4/19/22.

Ernest E. Goding, Postmaster at Dix, Neb.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 16, 1922 (61:513). [M. C. Latta signed general receipt dated March 17.] Resolution reconsidered and nomination recommitted March 17 (61:517). Reported favorably April 24 (61:736, 737). Confirmed again April 25 (61:745).

White House Record.—
Confirmed,
4/25/22.
Commissioned,
5/10/22.

Luther P. Maxey, postmaster at Adairville, Ky.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" May 18, 1922 (61:841). Notification received at White House May 19, 10.30 a. m. [receipt signed by M. C. Latta]. Return of resolution requested and motion to reconsider entered May 19 (61:844). Resolution returned and nomination recommitted May 20 (61:854). Reported favorably June 6 (61:918). Again confirmed June 8 (61:927).

White House Record.—
Confirmed,
5/18/22.
Again confirmed,
6/8/22.
Commissioned,
6/21/22.

165 Forrest L. Strong, postmaster at Clinton, Okla., and Elmer D. Rook, postmaster at Sayre, Okla.

Senate Executive Journal—Confirmed; ordered that President be notified "forthwith" Jan. 30, 1923 (63:232). [M. C. Latta signed general receipt dated 10.55 a. m. Jan. 31.] Motion to reconsider entered and return of resolutions requested Feb. 1 (63:237). Resolution returned Feb. 2 (63:248; proceedings of Feb. 3). Confirmed again; ordered that President be notified "forthwith" Feb. 5 (63:255). Return of resolutions requested, resolutions reconsidered, and nominations recommitted Feb. 6 (63:266). Resolution returned Feb. 8 (63:273). Strong reported favorably Feb. 13 (63:296) and again confirmed Feb. 14 (63:302). Rook reported favorably Feb. 19 (63:314), and again confirmed Feb. 23 (63:325).

White House Record—

Forrest L. Strong:
Confirmed,
1/30/23.
Again confirmed,
2/5/23 and 2/14/23.
Commissioned,
3/15/23.

Elmer D. Rook:
Confirmed,
1/30/23.
Again confirmed,
2/5/23 and 2/23/23.
Commissioned,
3/16/23.

Dovie Varney, postmaster at Edgarton, W. Va.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 23, 1924 (64:377). [J. F. Sheahan signed general receipt dated Jan. 24.] Resolution reconsidered and nomination placed on the calendar Jan. 24 (64:386). Confirmed again Jan. 28 (64:392).

White House Record—

Confirmed,
1/28/24.
Commissioned,
2/23/24.

166 Walter L. Cohen, comptroller of customs at New Orleans, La.

Senate Executive Journal.—Rejected, 35–37; ordered that President be notified "forthwith" Feb. 18, 1924 (64:475–476). Notification received at White House Feb. 19, 10.55 a. m. [receipt signed by C. T. Hess]. Motion to reconsider and request return of resolution entered Feb. 26 (64:497). Resolution returned and consideration March 17 agreed to, Feb. 28 (64:506). Reconsidered and nomination confirmed, 39–38, March 17 (64:547–549).

White House Record—

Confirmed,
3/17/24.
Commissioned,
3/21/24 sgd. 3/22/24.

Herbert A. Harvey, postmaster at Newell, Iowa.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" April 3, 1924 (64:599). [C. T. Hess signed general receipt dated April 4.] Reconsidered and return of resolution requested April 15 (64:624). Resolution returned (64:635) with the following message from the President to the Senate:

To the Senate:

In compliance with the request of the Senate of April 15, 1924, I return herewith the resolution of the Senate of April 3, 1924, advising and consenting to the appointment of Herbert A. Harvey to be postmaster at Newell, Iowa.

CALVIN COOLIDGE.

THE WHITE HOUSE, APRIL 21, 1924.

The nomination was also withdrawn by the President the same day (64:635).

White House Record—

Date of Confirmation,
4/3/24.
Commissioned,
(Blank.)

[The above White House record does not indicate that a commission was ever issued by the President to Harvey following his confirmation of April 3, 1924. See Appendix "A," infra, p. 110.]

167 *Records of Post Office Department.*—Volume 93 records of appointments of postmasters (Iowa) 1900–1908 at p. 64, contains the following entry, under Newell:

Nomination withdrawn (act) Dec. 1–23.
Herbert A. Harvey, Apr. 3–24 Loys E. Couch Apr. 26–24.

The records of the Post Office Department also contain a card, on which appears the following entry:

Herbert A. Harvey, Act. PM, Dec., 1–23. Apr. 3–24 nomination withdrawn.

[Other entries on this card contain the letter "c" in red ink above the date of confirmation. There is no such entry above the date of confirmation of Herbert A. Harvey. The Postmaster General states that the above records of the Post Office Department show that no commission was issued to Harvey. See Appendix "B," infra, p. 111.]

William H. Steinke, Postmaster at Des Plaines, Ill.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Dec. 21, 1925 (66:286). [C. T. Hess signed general receipt dated Dec. 22.] Return of resolution requested Jan. 25, 1926 (66:470). Resolution returned Jan. 28 (66:500). Resolution reconsidered and nomination rejected Jan. 28 (66:502).

White House Record.—

Under the columns, Confirmed and Commissioned, there appears:

Rejected.
1/28/26.

James A. Cobb, judge of municipal court of District of Columbia.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" March 17, 1926 (66:706). Notification received

at White House March 18 [receipt signed by J. F. Sheahan]. Return of resolution requested and motion to reconsider entered March 18 (66:713). Resolution returned March 22 (66:717). Motion to reconsider failed June 10 (66:1048).

White House Record.—
Confirmed,
3/17/26.
Commissioned,
3/17/26.
Remarks:
Com. sgd. 6/12/26.

168 Charles R. Ligon, marshal for northern district of Mississippi.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" May 5, 1926 (66:895). [C. T. Hess signed general receipt dated May 6.] Motion to reconsider entered and return of resolution requested May 7 (66:907). Resolution returned May 8 (66:914). Resolution sent back to President May 25 (66:980).

White House Record.—
Confirmed,
5/5/26.
Commissioned,
5/5/26.
Remarks:
Com. sgd., 5/28/26.

John W. Pole, Comptroller of the Currency.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Saturday, Dec. 8, 1928 (69:82). Motion for reconsideration entered early in the session of Monday, Dec. 10 (69:85). [Mr. Bailey, the executive clerk, states that the President had not in fact been notified.] Confirmation reconsidered and nomination recommitted Dec. 11 (69:97). Reported favorably Dec. 13 (69:107). Confirmed again Dec. 14 (69:131).

White House Record.—
Confirmed,
12/14/28.
Commissioned,
12/17/28.

J. Reuben Clark, jr., Under Secretary of State.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 23, 1929 (69:297, 298). Motion to reconsider entered and return of resolution requested Jan. 30 (69:320). Request of Jan. 30 vacated Feb. 1 (69:332).

White House Record.—
Confirmed,
1/23/29.
Commissioned,
1/23/29.

Florence F. Davenport, postmaster at Napoleon, N. D.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" Jan. 31, 1930 (71:276). Motion to reconsider

entered and return of resolution requested Feb. 1 (71:281). Resolution returned Feb. 3 (71:282). Motion to reconsider withdrawn March 22 (71:451).

White House Record.—

[No record concerning commission.]

169 W. Bateman Cullen, postmaster at Clayton, Del.

Senate Executive Journal.—Confirmed; ordered that President be notified "forthwith" April 28, 1930 (71:585, 591). Motion to reconsider entered and return of resolution requested April 30 (71:603). Resolution returned May 2 (71:608). Reconsidered and nomination recommitted May 7 (71:635). Renominated Feb. 20, 1931 (73:444), and confirmed Feb. 25 (73:480).

White House Record.—

[No record concerning commission.]

APPENDIX "A"

THE WHITE HOUSE,
Washington, November 7, 1931.

MY DEAR SENATOR PEPPER:

You have requested information concerning the records in the executive offices of the White House with respect to several individuals who have been nominated for certain offices by the President and confirmed by the Senate. You have specifically requested information as to whether the records of the White House disclose that a commission was or was not issued by the President in eight instances. I submit herewith the results of a careful examination of these records.

1. The case of Samuel M. Pollock, who was nominated by President Johnson to be a brigadier general by brevet, could not be located among our records.

2. James F. Legate—the records of the executive office indicate that a commission was issued by the President on January 26, 1872.

3. Samuel Bard—the records of the executive office do not indicate that a commission was ever issued by the President.

4. J. R. Smith—the records of the executive office do not indicate that a commission was ever issued by the President.

5. James H. Lloyd—the records of the executive office do not indicate that a commission was ever issued by the President.

170 6. Frederick Puhler—the records of the executive office do not indicate that a commission was ever issued by the President following the confirmation of the Senate on January 10, 1887. They do indicate, however, that Frederick Puhler was renominated December 14, 1887, reconfirmed January 10, 1888, and commissioned February 20, 1888.

7. William Plimley—the records of the executive office indicate that a commission was issued to William Plimley as Assistant Treasurer at New York on March 12, 1903.

8. Herbert A. Harvey—the records of the executive office do not indicate that a commission was ever issued by the President.

The above statements that the records of the executive office indicate no commissions were issued in certain instances are based upon

the fact that no entry is made under the column entitled "Date of commission" in the records.

I trust that this information will be satisfactory for your purpose.

Sincerely yours,

(Sgd.) LAWRENCE RICHEY,
LAWRENCE RICHEY,
Secretary to the President.

Hon. GEORGE WHARTON PEPPER,
2225 Land Title Building, Philadelphia, Pennsylvania.

APPENDIX "B"

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., November 7, 1931.

Hon. GEORGE WHARTON PEPPER,
2225 Land Title Building, Philadelphia, Pennsylvania.

MY DEAR SENATOR PEPPER:

You have requested information concerning the records of the Post Office Department with respect to several individuals who have been nominated for the office of postmaster at various times in the past. You have specifically requested information as to whether the records of the Post Office Department show that a commission was or was not made out or issued in the following instances:

Samuel Bard, who was nominated postmaster, and confirmed by the Senate, at Chattanooga, Tennessee, on December 12, 1872;

J. R. Smith, who was nominated postmaster, and confirmed by the Senate, at Wheaton, Illinois, on January 23, 1883;

171 James H. Lloyd, who was nominated postmaster, and confirmed by the Senate, at Liberty, Missouri, on January 6, 1883;

Frederick Puhler, who was nominated postmaster, and confirmed by the Senate, at Ada, Minnesota, on January 10, 1887;

Herbert A. Harvey, who was nominated postmaster at Newell, Iowa, on March 27, 1924, and confirmed by the Senate on April 3, 1924.

A careful examination of the records of this department has been made. This examination discloses that in the first four cases named above there is no record in this department which indicates either that a commission was or was not made out or issued.

In the first four cases mentioned above, the department's records consist merely of a memorandum or blotter showing the names of persons, appointed as postmasters and the dates of confirmation by the Senate, with notations, which we fear are fragmentary and incomplete regarding certain incidental matters. This explains our inability to answer your questions in these four instances.

The only explanation that can be made at this time of the fact that the records of some offices are more complete than others is that in transferring data from the earlier records to the ones available to-day in the department, those making the transfers probably considered certain information of too little importance to be made a matter of record. The earliest records available in the department to-day and from which the above information was obtained, were begun in 1889.

In the fifth case cited, that of Herbert A. Harvey, who was nominated postmaster at Newell, Iowa, on March 27, 1924, and confirmed by the Senate on April 3, 1924, the records of this department show that no commission was issued to Mr. Harvey and he did not assume charge of the Newell post office under this appointment.

Very truly yours,

(Sgd.) WALTER F. BROWN.

172 In the Supreme Court of the District of Columbia

No. 79553, at law

UNITED STATES OF AMERICA, PETITIONER

v.

GEORGE OTIS SMITH, RESPONDENT

Order

Filed Dec. 22, 1931

The above cause having come on to be heard before this court, upon petition for a writ of quo warranto and the answer filed by the respondent herein, upon a schedule of Senate precedents filed of record herein, and upon a stipulation of both counsel, under date of December 10, 1931, entitled "Agreement of Counsel in Regard to Facts Concerning Nomination, Confirmation, and the Issuance of Commissions in Specific Cases, as Shown by the Senate Executive Journal, by Records of the Executive Offices of the White House, and in Certain Instances by Departmental Records," filed of record by order of this court under date of December 14th, 1931.

Now, on motion of George Wharton Pepper, Esq., attorney for the respondent herein, it is

Ordered and adjudged that the petition for a writ of quo warranto be and hereby is denied, with costs to be paid by petitioner, in
173 conformity with an opinion handed down by this court dated December 5, 1931.

From the foregoing judgment, the petitioner by the United States attorney of the District of Columbia, in open court, notes an appeal to the Court of Appeals.

PEYTON GORDON, *Justice.*

Dated December 22nd, 1931.

174 In the Supreme Court of the District of Columbia

No. 79553, at law

UNITED STATES OF AMERICA, PETITIONER

against

GEORGE OTIS SMITH, RESPONDENT

Assignment of errors

Filed Dec. 29, 1931

The petitioner respectfully designates the following assignments of error relied upon by it in the prosecution of its appeal from the order of this court entered on December 22, 1931.

First. That the said court erred in denying the petition for a writ of quo warranto by its order entered December 22, 1931.

Second. That the said court erred in holding that the respondent has been duly and regularly appointed to the office of member of the Federal Power Commission and duly and regularly designated as chairman thereof.

Third. That the said court erred in holding that the Senate of the United States, by action duly and regularly taken and pursuant to and in accordance with its standing rules, advised and consented to the appointment of the respondent as a member of the Federal Power Commission.

175 Fourth. That the said court erred in failing and refusing to hold that the Senate of the United States, by action duly and regularly taken and pursuant to and in accordance with its standing rules, refused to advise and consent to the appointment of the respondent as a member of the Federal Power Commission.

Fifth. That the said court erred in holding that the Senate of the United States had pursuant to and in accordance with its standing rules parted with possession and control of the nomination of the respondent and transferred such control to the President of the United States, by ordering on the 20th day of December, 1930, that the President of the United States be notified forthwith of its vote and action had and taken on said 20th day of December, 1930, on said nomination.

Sixth. That the said court erred in holding that the Senate of the United States by ordering on the 20th day of December, 1930, that the President of the United States be notified forthwith of its vote and action had and taken on said 20th day of December on the nomination of the respondent intended that the President of the United States proceed at once to appoint the respondent as a member of the Federal Power Commission, and that said order was tantamount to a warrant to proceed forthwith to issue a commission to the respondent.

Seventh. That the said court erred in holding that the Senate of the United States by ordering on the 20th day of December, 1930, that the President of the United States be notified forthwith

176 of its vote and action had and taken on said 20th day of December on the nomination of the respondent waived its election to reconsider said vote and action.

Eighth. That the said court erred in holding that the Senate of the United States had no power to vote on a motion to reconsider its vote and action had and taken on the said nomination of the respondent unless and until the President of the United States, in compliance with the request of the Senate for the return of the notification sent to him on the 22nd day of December, 1930, by its order of the 20th day of December, 1930, returned said notification to the Senate.

Ninth. That the said court erred in holding that the Senate of the United States had no power pursuant to and in accordance with its standing rules to reconsider the nomination of the respondent, unless the Senate had in its possession the copy of the resolution of the 20th day of December, 1930, notifying the President of the United States of its vote and action had and taken on said day advising and consenting to the appointment of respondent, transmitted to the President by the Secretary of the Senate on the 22nd day of December.

Tenth. That the said court erred in holding that the Senate of the United States lost its power pursuant to and in accordance with its standing rules to reconsider its vote and action had and taken on the 20th day of December, 1930, advising and consenting to the appointment of the respondent, by the refusal of the President of the
177 United States to return to the Senate the notification transmitted to the President on the 22nd day of December, 1930, by its order of the 20th day of December, 1930.

Eleventh. That the said court erred in holding that the Senate of the United States lost its power pursuant to and in accordance with its standing rules to reconsider its vote and action had and taken on the 20th day of December, 1930, advising and consenting to the appointment of the respondent, by the President's appointment of the respondent as a member of the Federal Power Commission and his designation of the respondent as chairman thereof on the 22nd day of December, 1930.

Twelfth. That the said court erred in holding that the President of the United States had no power to return to the Senate of the United States the notification transmitted to him on the 22nd day of December, 1930, by order of the Senate of the 20th day of December, 1930, after the President had appointed the respondent as a member of the Federal Power Commission and had designated him as chairman thereof.

Thirteenth. That the said court erred in other respects apparent.

Dated December 23, 1931.

JOHN W. DAVIS,
ALEXANDER J. GROESBECK,
Attorneys for Petitioner-Appellant.

Service of a copy of the above assignment of errors acknowledged this — day of December, 1931.

GEORGE WHARTON PEPPER,
Attorney for Respondent-Appellee.

Filed December 29, 1931.

178 In the Supreme Court of the District of Columbia

No. 79553 at law

UNITED STATES OF AMERICA, PETITIONER

against

GEORGE OTIS SMITH, RESPONDENT

Designation of record

Filed Dec. 29, 1931

Now comes the appellant in the above-entitled cause, by John W. Davis and Alexander J. Groesbeck, its attorneys, and designates the parts of the record which it desires to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. Petition for writ of quo warranto filed May 4, 1931.
2. Answer of the respondent to said petition for writ of quo warranto filed May 23, 1931.

3. Opinion of Justice Peyton Gordon, together with the pamphlet, Senate Precedents, made by said opinion a part of the record of this court in the above-entitled cause, filed on December 5, 1931.

4. The stipulation entitled "Agreement of Counsel in
179 Regard to Facts Concerning Nomination, Confirmation and the Issuance of Commissions in Specific Cases, as Shown by the Senate Executive Journal, by Records of the Executive Offices of the White House, and in Certain Instances by Departmental Records," made part of the record of this court by order of December 14, 1931, in the above-entitled cause.

5. Order of Justice Peyton Gordon, entered December 22, 1931, denying said petition for a writ of quo warranto.

6. Assignment of errors filed December —, 1931.

7. This designation of record.

JOHN W. DAVIS,
ALEXANDER J. GROESBECK,
Attorneys for Petitioner-Appellant.

Dated December 23, 1931.

Service of a copy of the above designation of record acknowledged this 23 day of December, 1931.

GEORGE WHARTON PEPPER,
Attorney for Respondent-Appellee.

Filed December 29, 1931.

180 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 179, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 79553 at law, wherein United States of America is petitioner and George Otis Smith is respondent, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 22nd day of January, 1932.

[SEAL.] FRANK E. CUNNINGHAM, *Clerk.*

[Indorsement on cover:] District of Columbia Supreme Court. No. 5596. United States of America, appellant, vs. George Otis Smith. Court of Appeals, District of Columbia. Filed Jan. 22, 1932. Henry W. Hodges, Clerk.

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CHARLES ELMORE CR
CL

No. 694

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

No. 5596. January Term, 1932.

THE UNITED STATES OF AMERICA,
Appellant,

v.

GEORGE OTIS SMITH,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Before MARTIN, *Chief Justice,* and ROBB, VAN ORSDEL, HITZ and GRONER, *Associate Justices.*

CERTIFICATE TO THE SUPREME COURT OF THE UNITED STATES.

The Court of Appeals of the District of Columbia hereby certifies that there is pending in that court a cause on appeal from the Supreme Court of the District of Columbia in which the United States of America prayed that a writ of *quo warranto* issue to determine the right of George Otis Smith to hold the offices of member and Chairman of the Federal Power Commission. The record discloses the following facts material to this certificate:

By an act of the Congress of the United States approved the twenty-third day of June, 1930, amend-

ing an act approved on the tenth day of June, 1920, there was created and established a commission known as the Federal Power Commission, composed of five commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom is designated by the President as chairman.

In pursuance of this statute and of the applicable provisions of the Constitution of the United States, the President, on the third day of December, 1930, transmitted to the Senate of the United States the nomination of one George Otis Smith of Maine as a member of the Federal Power Commission for the term expiring on the twenty-second day of June, 1935, said nomination being transmitted by letter in form as follows:

"The White House, December 3, 1930.

TO THE SENATE OF THE UNITED STATES:

I nominate the following-named persons to be members of the Federal Power Commission for the terms herein designated as follows:

For the term expiring June 22, 1935, George Otis Smith, of Maine.

For the term expiring June 22, 1934, Frank R. McNinch, of North Carolina.

For the term expiring June 22, 1933, Ralph B. Williamson, of Washington.

For the term expiring June 22, 1932, Marcel Garsaud, of Louisiana.

For the term expiring June 22, 1931, Claude L. Draper, of Wyoming.

HERBERT HOOVER."

Said letter of nomination has at all times since remained in the physical possession of the Senate of the United States.

In accordance with the rules of the Senate, the nomination of the said George Otis Smith was duly referred to the Committee on Interstate Commerce, which said Committee held hearings and deliberated concerning the character, ability and qualifications of the said George Otis Smith for the office to which he had been so nominated, and thereafter, on the fifteenth day of December, 1930, reported favorably to the Senate the name of the said George Otis Smith for the office to which he had been so nominated.

On the twentieth day of December, 1930, the Senate, in open executive session, undertook the consideration of the said nomination, and the following proceedings were had with reference thereto, to wit:

The presiding officer (Mr. Fess in the chair), stated the pending question, which was as follows:

> "Shall the Senate advise and consent to the appointment of George Otis Smith, to be a member of the Federal Power Commission?"

On the question of agreeing thereto, yeas and nays were demanded by Mr. Dill, a Senator from the State of Washington, and the demand being supported by one-fifth of the Senators present the roll was called whereupon thirty-eight Senators were found to have voted in the affirmative and twenty-two in the negative and thirty-five not voting. So it was accordingly

> "RESOLVED, That the Senate advise and consent to the appointment of the above named person to the office named agreeably to his said nomination."

Upon the announcement of the result of the vote so had the President *pro tempore* stated:

> "The Senate advises and consents to the nomination and the President will be notified";

Following the announcement by the Presiding Officer of the advice and consent of the Senate to the appointment of George Otis Smith no objection was made by any Senator to the statement of the Presiding Officer that "the President will be notified"; the statement so made became as if by unanimous consent an order of the Senate to their Secretary.

Thus, the following order was entered by the Secretary of the Senate in usual course upon the Executive Journal of the Senate for the said twentieth day of December, 1930, to wit:

> "ORDERED, that the foregoing resolution of confirmation be forwarded to the President of the United States."

And thereafter further proceedings having been had on the said day in the said Executive Session with reference to other nominations then pending before the Senate, it was,

> "ORDERED, that all resolutions of confirmation this day agreed to be forwarded forthwith to the President of the United States."

Upon the announcement of said order by the President *pro tempore*, no Senator objected to the order so announced and the order so made became as if by unanimous consent an order of the Senate to their Secretary and was duly entered upon the Executive Journal of the Senate for the said day and date in the form announced.

Upon the making of said orders it became and was the duty of the Secretary of the Senate under the rules of the Senate, forthwith to notify the President that advice and consent had been given to the appointment of the respondent, without awaiting the expiration of the second subsequent day of actual executive session.

On the said twentieth day of December, 1930, the same day on which the Senate so voted to advise and consent to the appointment of the said George Otis Smith, it thereafter adjourned in accordance with a concurrent resolution passed by the two Houses of Congress until 12.00 M., Monday, the fifth day of January, 1931.

On Monday, the twenty-second day of December, 1930, the Secretary of the Senate delivered by official messenger to the President of the United States the following communication, to wit:

"IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES.

Saturday, December 20, 1930.

RESOLVED, That the Senate advise and consent to the appointment of the following-named persons to the offices named agreeably to their respective nominations:

FEDERAL POWER COMMISSION.

George Otis Smith, to be a member for the term expiring June 22, 1935.

Frank R. McNinch, to be a member for the term expiring June 22, 1934.

Marcel Garsaud, to be a member for the term expiring June 22, 1932.

Attest:

(Signed) EDWIN P. THAYER,
Secretary."

Thereupon the President of the United States, on the twenty-second day of December, 1930, signed and delivered, through the Department of State, a commission to the said George Otis Smith, purporting to appoint him a member of the Federal Power Commission and designated him Chairman thereof; and the said George Otis Smith, forthwith and upon the same day

and date took the oath of office prescribed by law as such member of the Federal Power Commission and Chairman thereof, and undertook to assume and enter upon the discharge of the duties of said office, and has thence hitherto so continued.

The Standing Rules of the Senate, being Nos. 38 and 39 of the same during the period December 3, 1930, to February 7, 1931, were in form as follows:

"RULE XXXVIII

Executive Session—Proceedings on Nominations.

1. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and the final question on every nomination shall be, 'Will the Senate advise and consent to this nomination?' which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by unanimous consent.

2. Hereafter all business in the Senate shall be transacted in open session, unless the Senate in closed session by a majority vote shall determine that a particular nomination, treaty, or other matter shall be considered in closed executive session, in which case all subsequent proceedings with respect to said nomination, treaty, or other matter shall be kept secret: *Provided,* That the injunction of secrecy as to the whole or any part of proceedings in closed executive session may be removed on motion adopted by a majority vote of the Senate in closed executive session; *Provided further,* That Rule XXXV shall apply to open executive sessions: *And provided further,* That any Senator may make public his vote in closed executive session.

Anything in the rules of the Senate inconsistent with the foregoing is hereby repealed.

3. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual Executive session of the Senate; but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion.

4. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate.

5. When the Senate shall adjourn or take a recess for more than thirty days, all motions to reconsider a vote upon a nomination which has been confirmed or rejected by the Senate, which shall be pending at the time of taking such adjournment or recess, shall fall; and the Secretary shall return all such nominations to the President as confirmed or rejected by the Senate, as the case may be.

6. Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President.

RULE XXXIX.

The President Furnished With Copies of Records of Executive Sessions.

The President of the United States shall, from time to time, be furnished with an authenticated transcript of the Executive records of the Senate, but no further extract from the Executive Journal shall be furnished by the Secretary, except by special order of the Senate; and no paper except original treaties transmitted to the Senate by the President of the United States, and finally acted upon by the Senate, shall be delivered from the office of the Secretary without an order of the Senate for that purpose."

Pursuant to its adjournment had on the twentieth day of December, 1930, the Senate reconvened on the fifth day of January, 1931, and on that day went into open executive session; thereupon one Thomas J. Walsh, a Senator from the State of Montana, who on the twentieth day of December, 1930, had voted in the majority upon the question of advising and consenting to the appointment of the said George Otis Smith as a member of the Federal Power Commission, moved that the vote of the Senate taken as aforesaid, by which the Senate advised and consented to the said nomination of the said George Otis Smith, be reconsidered, and accompanied said motion with a motion that the President be requested to return to the Senate the notification theretofore transmitted to him in that regard, which said motions were so made on the next day of actual executive session of the Senate after the original vote upon said nomination had been taken.

On the ninth day of January, 1931, the President *pro tempore*, under an agreement for unanimous consent, put to the vote of the Senate the motion so made and pending for reconsideration of the vote whereby the Senate had advised and consented to the appoint-

ment of the said George Otis Smith, and the motion prevailed by a vote of yeas, 44; nays, 37; not voting, 15; whereupon the President *pro tempore* put to the further vote of the Senate the motion so made and pending to request the President to return to the Senate the notification theretofore sent to him by the Secretary of the Senate on the twenty-second day of December, 1930, as aforesaid, which motion prevailed by a similar vote. And thereupon the Secretary of the Senate forthwith forwarded to the President an authenticated transcript of the resolution requesting the return of the notification theretofore sent to him as aforesaid.

On the tenth day of January, 1931, the President *pro tempore* laid before the Senate a message from the President of the United States reading as follows:

"To the Senate of the United States:

I am in receipt of the resolution of the Senate dated January 5, 1931—

> That the President of the United States be respectfully requested to return to the Senate the resolution advising and consenting to the appointment of George Otis Smith to be a member of the Federal Power Commission, which was agreed to on Saturday, December 20, 1930.

I have similar resolutions in respect to the appointment of Messrs. Claude L. Draper and Col. Marcel Garsaud.

On December 20, 1930, I received the usual attested resolution of the Senate, signed by the Secretary of the Senate, as follows:

> *Resolved*, That the Senate advise and consent to the appointment of the following-named person to the office named agreeably to his nomination:

FEDERAL POWER COMMISSION.

George Otis Smith, to be a member of the Federal Power Commission.

I received similar resolutions in respect to Colonel Garsaud and Mr. Draper.

I am advised that these appointments were constitutionally made, with the consent of the Senate formally communicated to me, and that the return of the documents by me and reconsideration by the Senate would be ineffective to disturb the appointees in their offices. I can not admit the power in the Senate to encroach upon the Executive functions by removal of a duly appointed executive officer under the guise of reconsideration of his nomination.

I regret that I must refuse to accede to the requests.

HERBERT HOOVER.

THE WHITE HOUSE, January 10, 1931."

On the tenth of January, 1931, the said Thomas J. Walsh, a Senator as aforesaid, made a motion in the Senate of the United States to direct the Executive Clerk of the Senate to place on the Executive calendar for the action of the Senate the name and nomination of the said George Otis Smith, which motion was agreed to by a vote of the Senate as follows: yeas, 36; nays, 23; not voting, 37; and thereupon the President *pro tempore* made order accordingly.

Thereafter, on the twenty-third day of January, 1931, the President *pro tempore* of the Senate, in open executive session, put to a vote a motion by the said Thomas J. Walsh, a Senator as aforesaid, that the nomination of George Otis Smith, of Maine, for the office of member of the Federal Power Commission be recommitted to the Committee on Interstate Commerce for its consideration, which motion prevailed by the following vote: yeas, 45; nays, 32; not voting, 19.

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Thereafter, on the third day of February, 1931, one James Couzens, a Senator from the State of Michigan, acting for and on behalf of the Committee on Interstate Commerce, reported to the Senate without recommendation the nomination of the said George Otis Smith for the office of member of the Federal Power Commission, and the name and nomination of said George Otis Smith was thereupon ordered to be placed on the Executive Calendar for the further action of the Senate.

Thereafter on the fourth day of February, 1931, when the name and nomination of said George Otis Smith, of Maine, to be a member of the Federal Power Commission was read, the President *pro tempore* stated the question as follows:

> "Will the Senate advise and consent to the appointment of George Otis Smith to be a member of the Federal Power Commission, for a term expiring June 19, 1935?"

On the question of agreeing thereto, the yeas and nays having been demanded, the roll of the Senate, was called, and 33 Senators voting in the affirmative and 40 Senators voting in the negative and 23 Senators not voting, it was

> "RESOLVED, That the Senate do not advise and consent to the appointment of George Otis Smith, to be a member of the Federal Power Commission, for a term expiring June 19,* 1935."

Thereafter, on the seventh day of February, 1931, two days of actual executive session of the Senate having transpired since the action last aforesaid, the Secretary of the Senate delivered by messenger to the President of the United States a notice of the rejection of the said nomination in form as follows:

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*By clerical error stated to be June 19, 1935, instead of June 22, 1935, as the fact was.

"REJECTION.

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES.

Wednesday, February 4 (Legislative Day, Monday, January 26), 1931.

RESOLVED, That the Senate do not advise and consent to the appointment of the following-named person:

FEDERAL POWER COMMISSION.

George Otis Smith, of Maine, to be a member of the Federal Power Commission, for the term expiring June 22, 1935.

(Signed) EDWIN P. THAYER."

The Supreme Court of the District of Columbia heard the case on petition and answer and upon a stipulation of counsel embodying the Reconsideration Rules of the United States Senate from February 25, 1790, to date and numerous historical precedents thereunder, which precedents were taken from the Senate Executive Journal, records of the White House and records of Departments concerned.

On December 22, 1931, that court entered its order dismissing the petition for a writ of quo warranto, to which action of the court the petitioner took exception, and noted an appeal to the Court of Appeals of the District of Columbia.

QUESTION CERTIFIED.

In order that this court may be advised as to the proper disposition of this cause, and to the end that a correct result may be reached, the court desires the instruction of the Supreme Court of the United States upon the following question:

Upon the foregoing undisputed facts, was, or was not, the said George Otis Smith appointed by the President by and with the advice and consent of the Senate as a member of the Federal Power Commission, and duly designated as Chairman thereof?

Respectfully submitted,

GEORGE E. MARTIN,
Chief Justice.
CHARLES H. ROBB,
Associate Justice.
WILLIAM HITZ,
Associate Justice.
D. LAWRENCE GRONER,
Associate Justice.

Supreme Court of the United States

No. 694, October term, 1931

THE UNITED STATES OF AMERICA

vs.

GEORGE OTIS SMITH

Order granting motion to bring up entire record and cause

February 23, 1932

On consideration of the joint motion to bring up the entire record and cause and of the joint motion to advance this cause,

It is ordered by the court that the said motions be, and the same are hereby, granted, and the case is assigned for argument on Monday, March 21 next, after the case heretofore assigned for that day.

And it is further ordered that the motion of the Attorney General and Solicitor General of the United States for leave to participate in the oral argument of this case be granted as prayed.